

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

PACT XXP TECHNOLOGIES, AG \* Civil Docket No.  
\* 2:07-CV-563  
VS. \* Marshall, Texas  
\*  
\* May 18, 2012  
XILINX, INC. & AVNET, INC. \* 8:55 A.M.

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE JUDGE ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE

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(Proceedings recorded by mechanical stenography,  
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P R O C E E D I N G S

(Jury out.)

LAW CLERK: All rise.

THE COURT: Good morning. Please be seated.

I understand that there's something that either side -- one side wants to take up before we start.

Yes, sir?

MR. CASSADY: Yes, Your Honor. Jason Cassady again for the Defendant.

We -- this morning I thought maybe we'd have an issue with some of the damages numbers that were put out with Ms. Woodford's testimony. I asked counsel if they were planning to use the 79.4 -- I think the 79.7 million dollar number in front of this jury and ask for that number.

It sounds like the answer is yes, and so I wanted to bring that to the Court's attention and object to that number as being outside the scope of any disclosure in the case, not supported by any expert testimony.

Ms. Woodford simply testified to a calculated number as we all know, and I think it's a

1 similar situation where if that number is presented to a  
2 jury, it's just like presenting invalidity contention or  
3 invalidity art to the jury for prior art purposes that  
4 weren't disclosed.

5 THE COURT: All right. Mr. Grinstein?

6 MR. GRINSTEIN: Your Honor, to be clear,  
7 I'm going to put the jury verdict form on the ELMO, and  
8 the number I'm going to write in on the damages section  
9 is 30.8 million. I am going to mention 79.5 million --

10 THE COURT: All right.

11 MR. GRINSTEIN: -- because I think that  
12 supports our number.

13 THE COURT: All right. Mr. Cassady, as  
14 long as they proceed in the manner that he's just  
15 indicated, I don't see a problem with it.

16 MR. CASSADY: Your Honor, I mean, I was  
17 just saying that we'd object. I think it's prejudicial  
18 and I think it's confusing to a jury to hear that  
19 number, and it's just a calculation. It wasn't a number  
20 that actually had any supported opinion.

21 THE COURT: All right. I note your  
22 objection. They've already heard the number, however,  
23 so I think it's something that can be talked about by  
24 either side.

25 Just so both sides will know the way

1 we're going to proceed, it should take me about 40  
2 minutes or so to give these instructions to the jury.  
3 They're each going to have a copy of them.

4 I'm going to break after I read them the  
5 jury verdict form. And by that, I mean we're going to  
6 take a break, a 10-minute recess or so. So that they'll  
7 be fresh when you get them on the closing arguments.

8 We'll go through the closing argument  
9 arguments all the way, and then I'll -- I have some just  
10 final instructions to give them about how to deliberate  
11 and -- and the like.

12 Mr. Grinstein, does Plaintiff want a  
13 warning at a particular point in time, or have you got  
14 that covered?

15 MR. GRINSTEIN: I think we've got that  
16 covered. I do intend to go -- I think yesterday we  
17 might have said 25/15. I think I intend to go 30/10.

18 THE COURT: All right. So I'm going to  
19 let you go until you sit down.

20 MR. GRINSTEIN: When I hit 41 minutes, I  
21 have to sit down, I guess.

22 THE COURT: Well, no, you won't hit 41  
23 minutes.

24 MR. GRINSTEIN: I understand.

25 THE COURT: All right. And what about on

1 the Defense side; do you want a warning at a particular  
2 time?

3 MR. BAXTER: We're going to split 25/15,  
4 Your Honor. I think Mr. Arovas and myself, he can read  
5 a stopwatch and I cannot, so if you will let me know  
6 when there's five minutes, Your Honor, out of my time, I  
7 would appreciate it.

8 THE COURT: And which is yours?

9 MR. BAXTER: I've got the 15, Your Honor.

10 THE COURT: Are you going to go first  
11 or...

12 MR. BAXTER: No, sir. He's going to go  
13 first.

14 THE COURT: So Mr. Arovas, I'm just going  
15 to let you go until you're done; is that right?

16 MR. AROVAS: Yeah. Thank you, Your  
17 Honor.

18 THE COURT: Okay. And then what I'll do,  
19 Mr. Baxter, is let you know when you have how much left?

20 MR. BAXTER: Five, Your Honor.

21 THE COURT: Five minutes left.

22 MR. BAXTER: Yes.

23 THE COURT: So that will at 35 minutes  
24 overall.

25 MR. BAXTER: Yes, sir.

1 THE COURT: I'll tell you you've got five  
2 minutes left.

3 MR. BAXTER: I will note, Your Honor,  
4 I've been in this position before where the co-counsel,  
5 in order to keep me from the podium, took all the time.  
6 Perhaps he'll leave me some.

7 THE COURT: That will be between you and  
8 Mr. Arovas.

9 MR. AROVAS: But what Mr. Baxter didn't  
10 put on the record is how he dealt with that.

11 THE COURT: I understand.

12 And, Mr. Grinstein, do you want at the  
13 very end a particular warning or --

14 MR. GRINSTEIN: Two-minute warning.

15 THE COURT: -- just thank you?

16 MR. GRINSTEIN: A two-minute warning  
17 would be appreciated.

18 THE COURT: Two-minute warning.

19 MR. GRINSTEIN: Yeah, my rebuttal.

20 THE COURT: All right. I'll do that.  
21 I'll do that.

22 All right. Well then, I think we're  
23 ready. We'll bring in the jury.

24 LAW CLERK: All rise.

25 (Jury in.)

1 THE COURT: Good morning. Please be  
2 seated.

3 Ladies and Gentlemen of the Jury, I have  
4 observed over the last week that you've been listening  
5 carefully and taking notes. I don't want you to have to  
6 take notes during these instructions, so I'm going to  
7 ask the clerk to pass out to each of you a copy of the  
8 instructions and the verdict form.

9 You are welcome to read along as I give  
10 you these instructions, or you can just listen. You  
11 will have a complete copy of everything that I'm telling  
12 you that you can take back to the jury room with you.

13 So you -- either way, you want to do is  
14 just fine by me.

15 Also, so that you'll know, after I finish  
16 giving you these instructions, we're going to take the  
17 morning recess so that you can be fresh and give your  
18 full attention to the lawyers during their closing  
19 arguments. Each side has 40 minutes to present their  
20 arguments to you.

21 Members of the Jury, you have heard the  
22 evidence in this case. I will now instruct you on the  
23 law that you must apply. It is your duty to follow the  
24 law as I give it to you. On the other hand, you, the  
25 jury, are the judges of the facts. Do not consider any



1 statement that I have made during the trial or make in  
2 these instructions as an indication that I have any  
3 opinion about the facts of this case.

4           The attorneys will soon make their  
5 closing arguments. Statements and arguments of the  
6 attorneys are not evidence and are not instructions on  
7 the law. They are intended only to assist you in  
8 understanding the evidence and the parties' contentions.

9           In determining whether any fact has been  
10 proved in this case, you may, unless otherwise  
11 instructed, consider the testimony of all witnesses,  
12 regardless of who may have called them, and all exhibits  
13 received in evidence, regardless of who may have  
14 produced them. You may also consider any stipulations  
15 received in evidence.

16           By the Court allowing testimony or other  
17 evidence to be introduced over the objection of an  
18 attorney, the Court did not indicate any opinion as to  
19 the weight or effect of such evidence. As stated  
20 before, you are the sole judges of the credibility of  
21 all the witnesses and the weight and effect of all  
22 evidence.

23           When the Court sustained an objection to  
24 a question addressed to a witness, you must disregard  
25 that question entirely and may draw no reference from

1 its wording or speculate about what the witness would  
2 have said, if he or she had been permitted to answer.

3 At times during the trial, it was  
4 necessary for the Court to talk with the lawyers here at  
5 the bench out of your hearing or by calling a recess.  
6 We met because often during a trial something comes up  
7 that does not involve the jury. You should not  
8 speculate on what was said during such discussions.

9 Certain testimony in this case has been  
10 presented to you through depositions. A deposition is  
11 the sworn, recorded questions asked a witness in advance  
12 of trial. Under some circumstances, if a witness cannot  
13 be present to testify from the witness stand, the  
14 witness' testimony may be presented under oath in the  
15 form of a deposition.

16 Some time before this trial, attorneys  
17 representing the parties in this case questioned this  
18 witness under oath. A court reporter was present and  
19 recorded the testimony. This deposition testimony is  
20 entitled to the same consideration as testimony given by  
21 a witness from the witness stand. That is to say, you  
22 should judge the credibility of and weigh the importance  
23 of deposition testimony to the best of your ability as  
24 if the witness had testified in court.

25 While you should consider only the

1 evidence in the case, you are permitted to draw such  
2 reasonable inferences from the testimony and exhibits as  
3 you feel are justified in the light of common  
4 experience. In other words, you may make deductions and  
5 reach conclusions that reason and common sense lead you  
6 to draw from the facts that have been established by the  
7 testimony and evidence in the case.

8           The testimony of a single witness may be  
9 sufficient to prove any fact, even if a greater number  
10 of witnesses have testified to the contrary, if after  
11 considering all the other evidence, you believe that  
12 single witness.

13           There are two types of evidence that you  
14 may consider in properly finding the truth as to the  
15 facts in the case. One is direct evidence, such as the  
16 testimony of an eyewitness. The other is indirect or  
17 circumstantial evidence, the proof of a chain of  
18 circumstances that indicates the existence or  
19 non-existence of other facts.

20           As a general rule, the law makes no  
21 distinction between direct and circumstantial evidence,  
22 but simply requires that you find the facts based on the  
23 evidence, both direct and circumstantial.

24           When knowledge of a technical subject  
25 matter may be helpful to the jury, a person who has

1 special training or experience in that technical field,  
2 called an expert witness, is permitted to state his or  
3 her opinion on those technical matters. However, you  
4 are not required to accept that opinion. As with any  
5 other witness, it is up to you to decide whether to rely  
6 upon it.

7           Preponderance of the evidence means  
8 evidence that persuades you that a claim is more likely  
9 true than not true. In determining whether any fact has  
10 been proved by a preponderance of the evidence, you may,  
11 unless otherwise instructed, consider the stipulations,  
12 the testimony of all witnesses, regardless of who may  
13 have called them, and all exhibits received in evidence,  
14 regardless of who may have produced them.

15           Clear and convincing evidence means  
16 evidence that produces in your mind a firm belief or  
17 conviction as to the matter at issue. When a party has  
18 the burden of proving any claim or defense by clear and  
19 convincing evidence, it means the evidence has persuaded  
20 you that the claim or defense is highly probable.

21           In determining whether any fact has been  
22 proved by clear and convincing evidence, you may, unless  
23 otherwise instructed, consider the stipulations, the  
24 testimony of all witnesses, regardless of who may have  
25 called them, and all exhibits received in evidence,

1 regardless of who may have produced them.

2           Although proof to an absolute certainty  
3 is not required, the clear and convincing evidence  
4 standard requires a greater degree that is necessary for  
5 the preponderance of the evidence standard. If the  
6 proof establishes in your mind a firm belief or  
7 conviction, then the standard has been met.

8           As I did at the start of the case, I will  
9 give you a summary of each side's contentions in this  
10 case. I will then provide you with detailed  
11 instructions on what each side must prove to win on each  
12 of its contentions.

13           As I previously told you, PACT seeks  
14 money damages from Xilinx and Avnet for allegedly  
15 infringing the '181 patent and the '106 patent by  
16 making, using, selling, and offering for sale products  
17 that PACT argues are covered by Claims 1, 3, 17, and 30  
18 of the '181 patent and Claim 8 of the '106 patent.  
19 These are the asserted claims.

20           PACT also argues that Xilinx and Avnet  
21 have actively induced infringement of these claims by  
22 others. The products that are alleged to infringe are  
23 the Virtex-I Pro, Virtex-II Pro X, Virtex-4, Virtex-5,  
24 and Virtex-6 families of FPGAs.

25           Xilinx and Avnet deny that they have

1 infringed the asserted claims of the '181 patent and the  
2 '106 patent and argue that, in addition, the asserted  
3 claims are invalid. Xilinx and Avnet also deny that  
4 they have actively induced others to infringe the  
5 asserted claims of the '181 patent and the '106 patent.

6           Your job is to decide whether Xilinx and  
7 Avnet have infringed the asserted claims of the '181  
8 patent or the '106 patent and whether any of the  
9 asserted claims of the '181 patent or the '106 patent  
10 are invalid.

11           If you decide that any claim of the '181  
12 patent or the '106 patent has been infringed and is not  
13 invalid, you will then need to consider whether PACT has  
14 an obligation to notify Xilinx and Avnet of the alleged  
15 infringement and decide any money damages to be awarded  
16 to PACT to compensate it for the infringement.

17           You will also need to make a finding as  
18 to whether the infringement was willful. If you decide  
19 that any infringement was willful, that decision should  
20 not affect any damages award you make. I will take  
21 willfulness into account later.

22

23           Before you can decide many of the issues  
24 in this case, you will need to understand the role of  
25 patent claims. The patent claims are the numbered

1 sentences at the end of each patent. The claims are  
2 important, because it is the words of the claims that  
3 define what a patent covers. The figures and text in  
4 the rest of the patent provide a description and/or  
5 examples of the invention and provide a context for the  
6 claims, but it is the claims that define the breadth of  
7 the patent's coverage.

8               Each claim is effectively treated as if  
9 it were a separate patent, and each claim may cover more  
10 or less than another claim. Therefore, what a patent  
11 covers depends, in turn, on what each of its claims  
12 covers.

13               You'll first need to understand what each  
14 claim covers in order to decide whether or not there is  
15 infringement of the claim and to decide whether the  
16 claim is invalid. The law says that it is my role to  
17 define the terms of the claims, and it is your role to  
18 apply my definitions to the issues that you're asked to  
19 decide in the case.

20               Therefore, as I explained to you at the  
21 start of the case, I have determined the meaning of the  
22 claims, and I've provided you my definitions of certain  
23 claims in your binder. You must accept my definition of  
24 these words in the claims as being correct. It is your  
25 job to take these definitions and apply them to the

1 issues that you're deciding, including the issues of  
2 infringement and validity.

3 I will now explain how a claim defines  
4 what it covers.

5 The claim sets forth in words a set of  
6 requirements. Each claim sets forth its requirements in  
7 a single sentence. If a device satisfies each of these  
8 requirements, then it is covered by the claim.

9 There can be several claims in a patent.  
10 Each claim may be narrower or broader than another claim  
11 by setting out more or fewer requirements. The coverage  
12 of a patent is assessed claim-by-claim.

13 In patent law, the requirements of a  
14 claim are often referred to as claim elements or claim  
15 limitations. When a product meets all the requirements  
16 of a claim, the claim is said to cover that product, and  
17 that product is said to fall within the scope of that  
18 claim. In other words, a claim covers a product where  
19 each of the claim elements or limitations is present in  
20 that product. If a product is missing even one  
21 limitation of a claim, the product is not covered by the  
22 claim.

23 The beginning portion or preamble of a  
24 claim often uses the word comprising. The word  
25 comprising as used in the preamble means including or



1 containing. When comprising is used in the preamble, a  
2 device that includes all the limitations of the claim,  
3 as well as additional elements, is covered by the claim.  
4 A claim requirement may describe a certain functionality  
5 or capability that the device must possess. In such  
6 cases, a device satisfies the requirement, if it is  
7 reasonably capable of operating in the recited manner.

8           Sometimes the words in a patent claim are  
9 difficult to understand, and, therefore, it is difficult  
10 to understand what requirements these words impose.

11           It's my job to explain to you the meaning  
12 of the words in the claims and the requirements that  
13 these words impose.

14           As I just instructed you, there are  
15 certain specific terms that I have defined, and you are  
16 to apply the definitions that I provide to you.

17           By understanding the meaning of the words  
18 in a claim and by understanding that the words in a  
19 claim set forth the requirements that a product must  
20 meet in order to be covered by that claim, you'll be  
21 able to understand the scope of coverage for each claim.

22           Once you understand what each claim  
23 covers, then you're prepared to decide the issues you  
24 will be asked to decide, such as infringement and  
25 invalidity.

1 I'll now explain to you the meaning of  
2 some of the words of the claims in this case. In doing  
3 so, I'll explain some of the requirements of the claims.

4 As I've previously instructed you, you  
5 must accept my definition of these words in the claims  
6 as correct.

7 For any words in the claim for which I've  
8 not provided you with the definition, you should apply  
9 their common meaning. You should not take my definition  
10 of the language of the claims as an indication that I  
11 have a view regarding how you should decide the issues  
12 that you've been asked to decide, such as infringement  
13 and invalidity. These issues are yours to decide.  
14 I have defined the following claim terms for you:

15 The term bundled means combined.

16 The term bus system means a system used  
17 to communicate information according to a bus protocol.

18 The term cells means configurable  
19 elements.

20 The term communication means exchange of  
21 information.

22 The term configurable elements means a  
23 component of a logic unit which can be set for a special  
24 function by a configuration string or word.

25 The term configuration string means a

1 series of bits of any length that represents a valid  
2 setting for the element to be configured so that an  
3 operable unit is obtained.

4           The term configuration means the function  
5 and interconnection of a logic unit, an FPGA cell, logic  
6 cell, or a PAE.

7           The term configured means having the set  
8 function and interconnection of a logic unit, an FPGA  
9 cell, logic cell, or a PAE.

10           The term configuring means setting the  
11 function and interconnection of a logic unit, an FPGA  
12 cell, or a PAE.

13           The term DFP means data flow processor  
14 according to German Patent DE 44 16 881.

15           The term DPGA means dynamically  
16 programmable gate array.

17           The term dynamically reconfigurable cells  
18 means a cell that can be halted and reset with a new  
19 configuration, while any remaining cells continue with  
20 the same function.

21           The term FPGA means field-programmable  
22 gate array.

23           The term interface or interface unit  
24 means unit providing implementation of a bus system  
25 control for communicating information across a shared

1 boundary.

2           The term multidimensional programmable  
3 cell architecture means a pattern of programmable cells  
4 disposed such that each cell has connections in at least  
5 two dimensions.

6           The term primary logic unit means unit  
7 for configuring and reconfiguring a PAE or logic cell  
8 embodied by a microcontroller specifically designed for  
9 this purpose.

10           The term reconfiguring means resetting  
11 any number of logic units, FPGA cells, logic cells, or  
12 PAEs with a new configuration, while any remaining logic  
13 units, FPGA cells, logic cells, or PAEs continue with  
14 the same function.

15           The term state machine means logic which  
16 can assume miscellaneous states. The transitions  
17 between states depend on various input parameters.

18           These machines are used to control  
19 complex functions.

20           The term state machine for controlling  
21 the at least one interface unit means permanent,  
22 predefined state machine for controlling the interface  
23 unit.

24           I'll now instruct you on how to decide  
25 whether or not Xilinx and Avnet have infringed the '181

1 patent or the '106 patent. Infringement is assessed on  
2 a claim-by-claim basis. Therefore, there may be  
3 infringement as to one claim but no infringement as to  
4 another.

5           In this case, there are two possible ways  
6 that a claim may be infringed. The two types of  
7 infringement are called direct infringement and active  
8 inducement. Active inducement is referred to as  
9 indirect infringement. There cannot be indirect  
10 infringement without someone else engaging in direct  
11 infringement.

12           To prove indirect infringement, PACT must  
13 also prove that Xilinx's indirect infringement and  
14 Avnet's indirect infringement caused some direct  
15 infringement.

16           In this case, PACT has alleged that  
17 Xilinx and Avnet directly infringe the '181 patent and  
18 the '106 patent. In addition, PACT has alleged that  
19 Xilinx and Avnet's customers directly infringe the '181  
20 patent and the '106 patent, and Xilinx and Avnet are  
21 liable for actively inducing that direct infringement by  
22 its customers.

23           In order to prove infringement, PACT must  
24 prove that the requirements for one or more of these  
25 types of infringement are met by a preponderance of the

1 evidence; that is, more likely than not that all of the  
2 requirements of one or more of these types of  
3 infringement have been proved.

4 I will now explain these two types of  
5 infringement in more detail.

6 In order to prove direct infringement,  
7 PACT must also prove by a preponderance of the evidence,  
8 i.e., that it is more likely than not that Xilinx and  
9 Avnet have made, used, sold, or offered for sale within  
10 the United States a product that meets all of the  
11 requirements of a claim.

12 You must compare the product with each  
13 and every one of the requirements of a claim to  
14 determine whether all of the requirements of that claim  
15 are met. If you find that the accused product includes  
16 each element of the claim, then that product directly  
17 infringes the claim even if such product contains  
18 additional elements that are not recited in the claim.

19 If you find, however, that the accused  
20 product is missing even one element of the claim, that  
21 product does not directly infringe the claim.

22 A patent can be directly infringed even  
23 if the alleged infringer did not have knowledge of the  
24 patent. A patent may also be directly infringed even  
25 though the accused infringer believes in good faith that

1 what it is doing is not an infringement of the patent.

2           You may have heard evidence and argument  
3 in this case about Xilinx's own patents relating to  
4 certain of its products. However, owning a patent is  
5 not a defense to infringement of another patent. A  
6 party can infringe someone else's patents, even though  
7 it may have patents of its own.

8           You must determine, separately for each  
9 asserted claim, whether or not there is infringement.  
10 PACT alleges that Xilinx and Avnet are liable for  
11 infringement by actively inducing their customers to  
12 directly infringe the '181 patent and the '106 patent.

13           As with direct infringement, you must  
14 determine whether there has been active inducement on a  
15 claim-by-claim basis.

16           Xilinx and Avnet are liable for active  
17 inducement of infringement of a claim only if PACT  
18 proves by a preponderance of the evidence that the acts  
19 are actually carried out by Xilinx and Avnet's customers  
20 and directly infringe that claim.

21           Xilinx and Avnet took action during the  
22 time the '181 patent and the '106 patent were in force  
23 intending to cause the directly infringing acts by  
24 Xilinx and Avnet's customers.

25           And Xilinx and Avnet were aware of the

1 '181 patent and the '106 patent and knew that the acts,  
2 if taken, would constitute direct infringement of that  
3 patent, or Xilinx and Avnet believed that there was a  
4 high probability that the acts, if taken, would  
5 constitute infringement of the '181 patent or the '181  
6 patent but deliberately avoided confirming that belief.

7           In order to establish active inducement  
8 of infringement, it is not sufficient by itself that  
9 Xilinx and Avnet's customers directly infringe the  
10 claim, nor is it sufficient by itself that Xilinx and  
11 Avnet were aware of the acts by their customers that  
12 allegedly constitute direct infringement.

13           Rather, you must find that Xilinx and  
14 Avnet specifically intended their customers to infringe  
15 the '181 patent and the '106 patent or that Xilinx and  
16 Avnet believed there was a high probability that its  
17 customers would infringe but remained willfully blind to  
18 the infringing nature of its customers' acts.

19           In this case, PACT argues that Xilinx  
20 infringed, and further that Xilinx infringed willfully.

21           If you have decided that Xilinx has  
22 infringed, you must go on and address the additional  
23 issue of whether or not this infringement was willful.

24           Willfulness requires you to determine by  
25 clear and convincing evidence that Xilinx acted



1 recklessly. To prove that Xilinx acted recklessly, PACT  
2 must prove two things by clear and convincing evidence:

3           The first part of the test is objective.  
4 PACT must persuade you that Xilinx acted despite a high  
5 likelihood that Xilinx's actions infringed a valid and  
6 enforceable patent. In making this determination, you  
7 may not consider Xilinx's state of mind. Legitimate or  
8 credible defenses to inducement -- to infringement, even  
9 if not ultimately successful, demonstrate a lack of  
10 recklessness.

11           Only if you conclude that Xilinx's  
12 conduct was reckless do you need to consider the second  
13 part of the test. The second part of the test does  
14 depend on the state of mind of Xilinx. The patent  
15 holder must persuade you that Xilinx actually knew or  
16 should have known that its actions constituted an  
17 unjustifiably high risk of infringement of a valid and  
18 enforceable patent.

19           To determine whether Xilinx had this  
20 state of mind, consider all facts which may include but  
21 are not limited to whether or not Xilinx acted in  
22 accordance with the standards of commerce for its  
23 industry.

24           Whether or not Xilinx intentionally  
25 copied a product of PACT that is covered by the '181 or

1 '106 patent.

2           Whether or not there is a reasonable  
3 basis to believe that Xilinx did not infringe or had a  
4 reasonable defense to infringement.

5           Whether or not Xilinx made a good-faith  
6 effort to avoid infringing the '181 patent or the '106  
7 patent. For example, whether Xilinx attempted to design  
8 around the '181 patent and the '106 patent.

9           And finally, whether or not Xilinx tried  
10 to cover up its infringement.

11           I will now instruct you on the rules you  
12 must follow in deciding whether or not Xilinx and Avnet  
13 have proven that -- that Claims 1, 3, 17, and 30 of the  
14 '181 patent and Claim 8 of the '106 patent are valid.

15           An issued patent is accorded a  
16 presumption of validity based on the presumption that  
17 the United States Patent Office acted correctly in  
18 issuing the patent. Because of this presumption, in  
19 order to prove that any claim of a patent is invalid,  
20 Xilinx and Avnet must persuade you by clear and  
21 convincing evidence, that is, you must be left with a  
22 clear conviction that the claim is invalid.

23           Prior art may include items that were  
24 publicly known or used, offered for sale, or sold in the  
25 United States, or publications or patents that disclose

1 the claimed invention or elements of the claimed  
2 invention.

3           To be prior art, the item or reference  
4 must have been publicly used or known in the United  
5 States or published or patented before the invention at  
6 issue was made or patented or published or publicly  
7 used, sold, or offered for sale in the United States  
8 more than one year before the filing date of the patent  
9 application at issue.

10           The parties have agreed that the  
11 following is a complete list of the prior art at issue  
12 in this case: U.S. Patent No. 6,052,773, issued to  
13 DeHon, the DeHon '773 patent.

14           Second, Hartenstein, Reiner W., et al., a  
15 new FPGA Architecture For Word-Oriented Datapaths,  
16 Lecture Notes in Computer Science, Volume 849, 1994.

17           Third, PCI Special Interest Group, PCI  
18 Local Bus Specification, Production Version, Revision  
19 2.1, June 1995.

20           And finally, Xilinx, Inc., The  
21 Programmable Logic Data Book, 1996.

22           In order for someone to be entitled to a  
23 patent, the invention must actually be new. In general,  
24 inventions are new when the identical product has not  
25 been made, used or disclosed before. Anticipation must

1 be determined on a claim-by-claim basis.

2           For the claim to be invalid because it is  
3 not new, Xilinx and Avnet must show by clear and  
4 convincing evidence that all of the requirements of that  
5 claim were present in a single previous item that was  
6 known of, used, or described in a single previous  
7 printed publication or patent. We call these things  
8 anticipating prior art.

9           To anticipate the invention, the  
10 prior art does not have to use the same words as  
11 the claim, but all of the requirements of the  
12 claim must have been disclosed, either expressly  
13 or inherently, to a person having ordinary skill  
14 in the art in the technology of the invention, so  
15 that looking at that one reference, that person  
16 could make and use the claimed invention.

17           Anticipating prior art must also  
18 disclose the claim requirements arranged and  
19 combined in the same way as recited in the claim.  
20 Something is inherent in an item of prior art if it  
21 is always present in the prior art item or always  
22 results from the practice of the prior art item, and  
23 if a person ordinarily skilled in the art would  
24 understand that to be the case. Inherency may not be  
25 established by mere probabilities or possibilities.

1 Xilinx and Avnet claim -- or contend that Claims 1, 3,  
2 17, and 30 of the '181 patent and Claim 8 of the '106  
3 patent are invalid because the claimed inventions are  
4 anticipated. Xilinx and Avnet must convince you of this  
5 by clear and convincing evidence; that is, that the  
6 evidence highly probably demonstrates that the claims  
7 are invalid.

8           Here is a list of ways that Xilinx and  
9 Avnet can show that a patent claim was not new or that  
10 the patentee lost the right to patent the claims:

11           An invention is not new if it was known  
12 to or used by others in the United States before  
13 December 20, 1996. An invention is known when the  
14 information about it was reasonably accessible to the  
15 public on that date.

16           An invention is not new if it was already  
17 patented or described in a printed publication anywhere  
18 in the world before December 20, 1996.

19           PACT has lost its rights if the claimed  
20 invention was already patented or described in a printed  
21 publication anywhere in the world by PACT or anyone else  
22 before October 8, 1996. An invention was patented by  
23 another if the other patent describes the same invention  
24 claimed by PACT to a person having ordinary skill in the  
25 technology.

1 PACT has lost its rights to the claimed  
2 invention or if the claimed invention was publicly used,  
3 sold, or offered for sale in the United States before  
4 October 6 (sic) 1996. An invention was publicly used  
5 when it was either accessible to the public or  
6 commercially exploited.

7 An invention was sold or offered for sale  
8 when it was offered commercially and what was offered  
9 was ready to be patented; that is, a description to one  
10 having ordinary skill in the field of the technology  
11 could have made and used the claimed invention, even if  
12 it was not yet reduced to practice.

13 Finally, an invention is not new if the  
14 claimed invention was described in a patent granted on  
15 an application for patent by another filed in the United  
16 States and the application was filed before December 20,  
17 1996.

18 Even though an invention may not have  
19 been identically disclosed or described in a single  
20 prior art reference before it was made by an inventor,  
21 in order to be patentable, the invention must also not  
22 have been obvious to a person of ordinary skill in the  
23 field of technology of the patent at the time the  
24 invention was made.

25 Xilinx and Avnet may establish that a

1 patent claim is invalid by showing, by clear and  
2 convincing evidence, that the claimed invention as a  
3 whole would have been obvious to persons having ordinary  
4 skill in the art at the time the invention was made in  
5 the field of input/output and bus systems for  
6 programmable logic devices.

7           In determining whether a claimed  
8 invention is obvious, you must consider the level of  
9 ordinary skill in the field of input/output and bus  
10 systems for programmable logic devices that someone  
11 would have had at the time the claimed invention was  
12 made, the scope and content of the prior art, and any  
13 differences between the prior art and the claimed  
14 invention.

15           Keep in mind that the existence of each  
16 and every element of the claimed invention in the prior  
17 art does not necessarily prove obviousness. Most, if  
18 not all, inventions rely on building blocks of prior  
19 art. In considering whether a claimed invention is  
20 obvious, you should consider whether at the time of the  
21 claimed invention there was a reason that would have  
22 prompted a person having ordinary skill in the field of  
23 input/output and bus systems for programmable logic  
24 devices to combine the known elements in a way the  
25 claimed invention does, taking into account such factors

1 as:

2           Whether the claimed invention was merely  
3 the predictable result of using prior art elements  
4 according to their known functions.

5           Whether the claimed invention provides an  
6 obvious solution to a known problem in the relevant  
7 field.

8           Whether the prior art teaches or suggests  
9 the desirability of combining elements claimed in the  
10 invention.

11           Whether the prior art teaches away from  
12 combining elements in the claimed invention.

13           Whether it would have been obvious to try  
14 the combinations of elements, such as when there is a  
15 design need or market pressure to solve a problem and  
16 there are a finite number of identified predictable  
17 solutions.

18           And finally, whether the change resulted  
19 more from design incentives or other market forces.

20           To find it rendered the invention  
21 obvious, you must find that the prior art provided a  
22 reasonable expectation of success. Obvious to try is  
23 not sufficient in unpredictable technologies.

24           In determining whether the claimed  
25 invention was obvious, consider each claim separately.



1 Do not use hindsight; that is, consider only what was  
2 known at the time of the invention without having read  
3 PACT's patents. In other words, you should not consider  
4 what a person of ordinary skill in the art would know at  
5 the present time or after reading PACT's patents.

6           In making these assessments, you should  
7 not take -- or you should take into account any  
8 objective evidence, sometimes called secondary  
9 considerations -- all right. That was not for  
10 particular dramatic effect.

11           In making these assessments you should  
12 take into account any objective evidence, sometimes  
13 called secondary considerations, that may have existed  
14 at the time of the invention and afterwards that may  
15 shed light on the obviousness or not of the claimed  
16 invention, such as:

17           Whether the invention was commercially  
18 successful as a result of the merits of the claimed  
19 invention, rather than the results of design needs or  
20 market pressure, advertising or similar activities.

21           Whether the invention satisfied a  
22 long-felt need.

23           Whether others had tried and failed to  
24 make the invention.

25           Whether others treated the invention --

1 or I'm sorry, whether others invented the invention at  
2 roughly the same time.

3                   Whether others copied the invention.

4                   Whether there were changes or related  
5 technologies or market needs contemporaneous with the  
6 invention.

7                   Whether the invention achieved (sic)  
8 expected results.

9                   Whether others in the field praised the  
10 invention.

11                   Whether persons having ordinary skill in  
12 the art of the invention expressed surprise or disbelief  
13 regarding the invention.

14                   Whether others sought or obtained rights  
15 to the patent from the patentholder.

16                   And whether the inventor proceeded  
17 contrary to accepted wisdom in the field.

18                   In deciding what the level of ordinary  
19 skill in the field of input/output or bus systems for  
20 programmable logic devices is, you should consider all  
21 the evidence introduced at trial, including but not  
22 limited to:

23                   The levels of education and experience of  
24 the inventor and other persons actively working in the  
25 field.

1                   The types of problems encountered in the  
2 field.

3                   Prior art solutions to those problems.

4                   Rapidly with which innovations are made.

5                   And the sophistication of the technology.

6                   In considering whether the claimed  
7 invention was obvious at the time it was made, you  
8 should consider the scope and content of the prior art  
9 that I previously identified.

10                  When a party attacking the validity of a  
11 patent relies on prior art which was specifically  
12 considered by the Examiner during the prosecution of the  
13 application leading to the issuance of the patent, that  
14 party bears the burden of overcoming the deference due a  
15 qualified government agency official presumed to have  
16 performed his or her job.

17                  If you find that Xilinx and Avnet  
18 infringed any valid claim of the '181 patent or the '106  
19 patent, you must then consider what amount of damages to  
20 award PACT.

21                  I will now instruct you about the measure  
22 of damages. By instructing you on damages, I am not  
23 suggesting which party should win this case on any  
24 issue.

25                  The damages you award must be adequate to

1 compensate PACT for the infringement. They are not  
2 meant to punish an infringer.

3 PACT has the burden to establish the  
4 amount of its damages by a preponderance of the  
5 evidence. While the patent owner is not required to  
6 prove damages with mathematical precision, it must prove  
7 them with reasonable certainty. In other words, you  
8 should award only those damages that PACT establishes  
9 that it more likely than not suffered.

10 In this case, PACT seeks a reasonable  
11 royalty. A reasonable royalty is defined as the money  
12 amount PACT and Xilinx would have agreed upon as a fee  
13 for the use of the invention at the time prior to when  
14 the infringement began. A reasonable royalty may only  
15 be applied to infringement that occurred in the United  
16 States.

17 I will give more detailed instructions  
18 regarding damages shortly. Note, however, that PACT is  
19 entitled to recover no less than a reasonable royalty  
20 for the infringement.

21 A royalty is a payment made to a  
22 patentholder in exchange for the right to make, use, or  
23 sell the claimed invention. A reasonable royalty is the  
24 amount of any -- is the amount of royalty payment that a  
25 patentholder and the infringer would have agreed to in

1 the hypothetical negotiation taking place at a time  
2 prior to when the infringement first began.

3           In considering this hypothetical  
4 negotiation, you should focus on what the expectations  
5 of the patentholder and the infringer would have been  
6 had they entered into an agreement at that time and had  
7 they acted reasonably in their negotiations. In  
8 determining this, you must assume that both parties  
9 believed the patent was valid and infringed and that the  
10 patentholder and infringer were willing to enter into an  
11 agreement.

12           The reasonable royalty you determine must  
13 be a royalty that would have resulted from the  
14 hypothetical negotiation, not simply a royalty either  
15 party would have preferred.

16           Evidence of things that happened after  
17 the infringement first began can be considered in  
18 evaluating the reasonable royalty only to the extent  
19 that the evidence aids in assessing what royalty would  
20 have resulted from a hypothetical negotiation. Although  
21 evidence of the actual profits an alleged infringer made  
22 may be used to determine the anticipated profits at the  
23 time of the hypothetical negotiation, the royalty may  
24 not be limited or increased based on the actual profits  
25 the alleged infringer made.

1                   In determining the reasonable royalty,  
2 you should consider all the facts known and available to  
3 the parties at the time the infringement began. Some of  
4 the kinds of factors you may consider in making your  
5 determination are:

6                   The royalties received by the patentee  
7 for licensing of the patent-in-suit, proving or tending  
8 to prove an established royalty.

9                   The rates paid by the licensee for the  
10 use of other patents comparable to the patent-in-suit.  
11 The nature and scope of the license as exclusive or  
12 nonexclusive or as restricted or nonrestricted in terms  
13 of territory or with respect to whom the manufactured  
14 product may be sold.

15                  The licensor's established policy and  
16 marketing program to maintain his or her patent monopoly  
17 by not licensing to others to use the invention or by  
18 granting licenses under special conditions designed to  
19 preserve that monopoly.

20                  The commercial relationship between the  
21 licensor and licensee, such as whether they are  
22 competitors in the same territory in the same line of  
23 business, or whether they are inventor and promoter.

24                  The effect of selling the patented  
25 specialty in promoting sales of other products of the

1 licensee, the existing value of the invention to the  
2 licensor as a generator of sales of his non-patented  
3 items, and the extent of such derivative or conveyed  
4 sales.

5                   The duration of the patent and the term  
6 of the license.

7                   The established profitability of the  
8 product made under the patents, its commercial success,  
9 and its current popularity.

10                  The utility and advantages of the  
11 patented property over the old modes or devices, if any,  
12 that had been used for working out similar results.

13                  The nature of the patented invention, the  
14 character of the commercial embodiment of it as owned  
15 and produced by the licensor, and the benefits to those  
16 who have used the invention.

17                  The extent to which the infringer has  
18 made use of the invention and any evidence probative of  
19 the value of that use.

20                  The portion of the profit or of the  
21 selling price that may be customary in the particular  
22 business or in comparable business to allow for the use  
23 of the invention or analogous inventions.

24                  The portion of the realizable profits  
25 that should be credited to the invention as

1 distinguished from non-patented elements, the  
2 manufacturing process, business risks, or significant  
3 features or improvements added by the infringer.

4           The opinion and testimony of qualified  
5 experts.

6           The amount that a licensor, such as the  
7 patentee, and a licensee, such as the infringer, would  
8 have agreed upon, at the time the infringement began, if  
9 both had been reasonably and voluntarily trying to reach  
10 an agreement; that is, the amount which a prudent  
11 licensee -- who desired, as a business proposition, to  
12 obtain a license to manufacture and sell a particular  
13 article embodying the patented invention -- would have  
14 been willing to pay as a royalty and yet be able to make  
15 a reasonable profit and which amount would have been  
16 acceptable by a prudent patentee who was willing to  
17 grant a license.

18           No one factor is dispositive and you can  
19 and should consider the evidence that has been presented  
20 to you in this case on each of these factors. You may  
21 also consider any other factors which in your mind would  
22 have increased or decreased the royalty the infringer  
23 would have been willing to pay and the patentholder  
24 would have been willing to accept, acting as normally  
25 prudent business people.



1                   The final factor establishes the  
2 framework which you should use in determining a  
3 reasonable royalty, that is, the payment which would  
4 have resulted from a negotiation between the  
5 patentholder and the infringer taking place at a time  
6 prior to when the induce -- the infringement began.

7                   In determining the amount of damages, you  
8 must determine when the damages began. To do so, you  
9 may need to consider whether PACT was obligated to  
10 notify Xilinx and Avnet of its alleged infringement and,  
11 if it was, whether it properly did so.

12                  If a patent owner offers products covered  
13 by its patent for sale in the United States or imports  
14 such products into the United States, it is required to  
15 mark those products. Marking is placing either the word  
16 patent or the abbreviation P-A-T, period, with the  
17 patent's number on substantially all of the products  
18 that include the patented invention. You must determine  
19 whether PACT offered for sale or imported into the  
20 United States a product that includes the claimed  
21 invention.

22                  An offer for sale occurs when the terms  
23 of the offer are sufficiently detailed that a person  
24 could make a binding contract simply by accepting the  
25 offer. An offer is sufficient if it identifies the

1 product and provides a quantity to be purchased or sold.

2           Advertising a product is not sufficient  
3 to constitute an offer for sale if it does not indicate  
4 that the advertising party is willing to be bound to  
5 sell the product for the terms identified in the  
6 advertisement without further discussion.

7           If you find that PACT offered for sale in  
8 the United States or imported into the United States a  
9 patented product, damages after such time begin when  
10 Xilinx received actual notice of the alleged  
11 infringement. However, any damages that arose before  
12 that time are not affected.

13           You must determine the date that Xilinx  
14 and Avnet received actual notice of the '181 patent and  
15 the '106 patent and the specific product alleged to  
16 infringe. Actual notice means that PACT communicated to  
17 Xilinx and Avnet a specific charge of infringement of  
18 the '181 patent and the '106 patent by a specific  
19 accused product or device.

20           The filing of the complaint in this case  
21 qualified as actual notice, so the damages period begins  
22 no later than the date the complaint was filed on  
23 December 12, 2007.

24           If you find that PACT did not offer for  
25 sale in the United States or import into the United

1 States a patented product, damages begin without the  
2 requirement for actual notice of the alleged  
3 infringement. If you find this, damages should be  
4 calculated as of the date you determine that the  
5 infringement began.

6           You must perform your duties as jurors  
7 without bias or prejudice to any party. The law does  
8 not permit you to be controlled by sympathy, prejudice,  
9 or public opinion.

10           All parties expect that you will  
11 carefully and impartially consider all of the evidence,  
12 follow the law as it is now being given to you, and  
13 reach a just verdict regardless of the consequences.  
14 Answer each question from the facts as you find them.  
15 Do not decide who you think should win and then answer  
16 the questions accordingly. Your answers and your  
17 verdict must be unanimous.

18           Ladies and Gentlemen, I ask you now to  
19 turn to the verdict form which is the three-page  
20 document that you were given last. I want to review  
21 that verdict form with you, and then I'll come back to  
22 the remainder of the instructions.

23           As you'll see on the first page of the  
24 verdict form, it directs you in answering these  
25 questions; you're to follow all of the instructions I've

1 given you.

2           The first question is, did PACT prove by  
3 a preponderance of the evidence that Xilinx or Avnet  
4 infringed the claims of the '181 and '106 patents listed  
5 below? Answer yes or no for each patent claim. If you  
6 find the claim infringed, answer yes; otherwise, answer  
7 no.

8           And you'll see you have a chart below  
9 which lists the five claims at issue and has a box for  
10 Xilinx infringed. And you would answer yes or no for  
11 each claim as to Xilinx. And the separate box for  
12 Avnet, and you would answer yes or no as to Avnet.

13           The second question on the next page is,  
14 did Xilinx or Avnet prove by clear and convincing  
15 evidence that any of the following claims are invalid in  
16 view of the prior art, and you would answer yes or no  
17 for each claim. If you find the claim invalid, answer  
18 yes; otherwise, answer no.

19           And you see a chart, and it lists the  
20 five claims and has a box for invalid as anticipated,  
21 and you would answer yes or no. And a separate box as  
22 for invalid as obvious, and you would answer yes or no.

23           Then you see that you should answer  
24 Claims 3 -- questions 3 through 6 only if you found at  
25 least one claim both infringed and not invalid.

1                   And those questions are No. 3: Did PACT  
2 prove by clear and convincing evidence that Xilinx  
3 willfully infringed the '181 or '106 patents? You would  
4 write in your answer, either yes or no.

5                   No. 4: Did PACT offer to sell in the  
6 United States or import into the United States a  
7 patented product? You would answer yes or no.

8                   No. 5: If you answered yes to Question  
9 4, when did the earliest offer to sell or importation  
10 occur? And you would fill in a date.

11                  And finally, Question 6 on the third page  
12 is: What sum of money do you find from a preponderance  
13 of the evidence would fairly and reasonably compensate  
14 PACT for the patent infringement you found? And you  
15 would fill in a dollar amendment.

16                  The person you elect as your Foreperson  
17 would sign and date the form and advise the bailiff that  
18 you were ready to return your verdict.

19                  Now, Ladies and Gentlemen, we will now  
20 with that take the morning recess. We'll take 15  
21 minutes, and then return, and the lawyers will present  
22 their closing arguments. So with that, we'll adjourn.

23                  LAW CLERK: All rise.

24                  (Jury out.)

25                  THE COURT: Is there anything we need to

1 put on the record before the break?

2 MR. GRINSTEIN: Not from the Plaintiff,  
3 no.

4 MR. COHEN: Probably should to have the  
5 record clear that in one of the definitions you left out  
6 the word permanent.

7 THE COURT: I did?

8 MR. COHEN: I believe.

9 THE COURT: Where is it?

10 MR. COHEN: It was the definition of  
11 interface unit.

12 THE COURT: Are you -- are you saying  
13 that the written --

14 MR. COHEN: No, the written is fine.  
15 I -- I --

16 THE COURT: I -- in my reading of it I  
17 left it out?

18 MR. COHEN: Yeah, I believe so, Your  
19 Honor. That would be Page 5, the term interface or  
20 interface unit means.

21 THE COURT: Does anyone -- is that a  
22 consensus? Did anyone else notice that?

23 MR. GRINSTEIN: Possible to check the  
24 transcript or too soon?

25 THE COURT: Let me see.

1 MR. COHEN: Your Honor, I just want to  
2 make sure the record was clear.

3 THE COURT: Okay. Well, I -- you -- are  
4 you requesting that some action be taking -- taken about  
5 that? I mean, the jurors do have a copy in their  
6 notebooks that they've had and there's a -- they have a  
7 copy of the printed instructions. I am sure I did  
8 occasionally change a word here or there in the course  
9 of the 15 pages, but --

10 MR. AROVAS: Your Honor, we would  
11 actually request, just in case any of the jurors took  
12 notes or were recording that, that is obviously of all  
13 the words in the case probably the single most  
14 significant one and one that we're going to be talking  
15 about a lot in closing.

16 Now, you know, from our side, I don't  
17 think any of the rest of us or that the transcript can  
18 say for sure. I mean, Mr. Cohen was the one designated  
19 to try to track as the -- the portions of the charge was  
20 being read, so just in case --

21 MR. GRINSTEIN: Mr. Cohen.

22 MR. AROVAS: -- yeah, an enviable job,  
23 but just because it is such a central word, we would  
24 request that that piece just be reread to the jury.

25 MR. GRINSTEIN: I don't have a problem,

1 of course, rereading it if it wasn't in the transcript.  
2 I understand that maybe we can see the transcript and  
3 then --

4 THE COURT: All right.

5 MR. AROVAS: Of course, obviously, if  
6 it's in the transcript --

7 THE COURT: All right.

8 MR. AROVAS: -- we have no issue.

9 THE COURT: We'll check on that during  
10 the break, and we're in recess. Thank you.

11 MR. AROVAS: Thank you, Your Honor.

12 (Recess.)

13 LAW CLERK: All rise.

14 THE COURT: Before we bring in the jury,  
15 I will note that I am going to reread the claim  
16 construction on interface. It just -- so there will be  
17 no issue about that, I'll simply reread that. You can  
18 tell them it's because I may have misspoken, and then  
19 I'll turn it over for closing argument.

20 MR. BAXTER: Thank you, Your Honor.

21 MR. GRINSTEIN: Thank you.

22 THE COURT: Thank you. Bring in the  
23 jury.

24 (Jury in.)

25 THE COURT: Thank you. Please be seated.



1                   Ladies and Gentlemen, it has been pointed  
2 out to me that I may have misspoken during my reading of  
3 one of the claim constructions to you, and I'll say  
4 generally, if at any point I misspoke in giving you  
5 these instructions, the printed instructions that you  
6 have are -- are what we have carefully put together.  
7 But I do want to give you, again, the claim construction  
8 for interface or interface unit.

9                   The term interface or interface unit  
10 means unit providing permanent implementation of a bus  
11 system control for communicating information across a  
12 shared boundary.

13                   And if I said anything different during  
14 my earlier instructions, you should disregard that.

15                   And with that, I would ask you to give  
16 your attention at this time to the lawyers for their  
17 closing arguments, and we'll start with the Plaintiff.

18                   MR. GRINSTEIN: Good morning, Ladies and  
19 Gentlemen of the Jury.

20                   Let me be the first person to thank  
21 you-all for your time and attention during this long  
22 week and for your jury service. I know this trial has  
23 caused you-all to be away from your families, from your  
24 homes, from your jobs, all to help us resolve this  
25 dispute.

1                   And I also know I can speak on behalf of  
2 both sides to tell you that we very, very much  
3 appreciate your jury service.

4                   Out of the box, that is a phrase we've  
5 heard a lot during this trial. In fact, I had one of my  
6 colleagues count it up. It's been said 47 different  
7 times during this trial. It's kind of catchy. It's  
8 easy to remember. And as a description of PACT's  
9 patented inventions, it is utterly and completely wrong.

10                  In fact, if we want to talk about boxes,  
11 their real issue in this case is that Xilinx is boxed  
12 in. Xilinx is boxed in by the language of the claims of  
13 these patents. Xilinx is boxed in by the Court's  
14 definition of those claims. And Xilinx is boxed in by  
15 all of those bad documents you've seen during this case.  
16 Maybe that's why Xilinx wants to talk about out of the  
17 box so much, because Xilinx wants you, Ladies and  
18 Gentlemen of the Jury, to let it out of that box.

19                  But I don't think you-all should. I  
20 don't think you should let Xilinx out of that box. And  
21 that phrase out of the box certainly has nothing to do  
22 whatsoever with the patented inventions in this case.

23                  Before I get to those patented  
24 inventions, I want to spend a few minutes talking about  
25 some of the sideshows we've heard about in this case.

1                   One of the sideshows we heard about in  
2 this case was that PACT was a bad business and PACT had  
3 a bad chip. You heard that over and over and over again  
4 from the Defendants.

5                   And you know what, as an initial matter,  
6 we disagree with that. We think PACT has had quite a  
7 few successes for a small startup company. 60 patents  
8 granted in the United States, a deal to put its chips on  
9 satellites going into space, praise from folks like  
10 Lawrence Livermore National Laboratory, technology  
11 collaboration with Intel.

12                  But at the end of the day, all of that  
13 really doesn't matter anyway. It's a sideshow.

14                  Think about it this way: If you have a  
15 piece of property and you wanted to drill for oil on  
16 your land and, you know what, you hit a dry hole, does  
17 that give Exxon the right to come on your land and drill  
18 its own well on your land just because you couldn't  
19 drill a successful well yourself?

20                  Of course not. If Exxon came on your  
21 land and started drilling your land and taking your oil,  
22 they would owe you a royalty, because that property is  
23 not Exxon's property.

24                  And it's the same thing here. Whether or  
25 not PACT had a good business or whether or not PACT had

1 good or bad chips makes absolutely no difference,  
2 because it doesn't give Xilinx the right to come on to  
3 PACT's intellectual property and take it without paying.

4           And even more importantly, whether or not  
5 PACT had a good business and whether or not PACT had a  
6 good or a bad chip says absolutely nothing about the  
7 value of its patents. And you don't have to take that  
8 from me. You can take that from the patent grab e-mail  
9 where Mr. Parlour says very clearly just the fact that a  
10 business doesn't do well commercially doesn't mean it  
11 has bad technology.

12           You can take that from the testimony of  
13 Dr. Bolsens, who said, you know what, just because a  
14 company doesn't do well out in the marketplace has  
15 nothing to do with whether or not it's got good patents.

16           In fact, you don't have to take this from  
17 me; you don't have to take this from Xilinx. You can  
18 take it from the Court, because the Court told you in  
19 its instructions that a patent owner is entitled, under  
20 the United States Constitution, to come into this Court  
21 and defend its intellectual property rights.

22           And it doesn't matter how big they are;  
23 it doesn't matter who owns them; it doesn't matter what  
24 kind of a business they are. They all have the same  
25 right to protect their intellectual property. So that

1 is a sideshow.

2 Another sideshow we heard about in this  
3 case was this whole argument of PACT must have  
4 investigated Xilinx. And I have to confess, I had a  
5 hard time following this argument. It was a complicated  
6 contraption of an argument, but as I basically  
7 understand it, the argument went:

8 PACT knew it had to investigate folks who  
9 it does business with. One of those folks was Xilinx.  
10 Xilinx's information was on the internet. PACT,  
11 therefore, must have gone on the Internet and researched  
12 Xilinx. PACT did not accuse Xilinx of infringement  
13 years ago. Xilinx rejected a business deal with PACT in  
14 2006, and so, therefore, PACT sued Xilinx in 2007  
15 because of sour grapes.

16 That argument was a mouthful. And it's  
17 also based completely on speculation and guesswork and  
18 not a single real document out of PACT's files, and it  
19 makes not one whit of sense.

20 Because as you've heard the testimony,  
21 which Xilinx loved to tell you about, PACT had gone out  
22 and tried to do business deals with 75 different  
23 companies. But did it file 75 different lawsuits?  
24 No. The only company it's filed suit against is Xilinx,  
25 because in 2007, Xilinx -- PACT discovered Xilinx was

1 taking PACT's intellectual property. So this whole  
2 business about PACT must have investigated Xilinx is a  
3 sideshow.

4 Another sideshow in this case, Robert  
5 Munch, the co-inventor. I bet you-all thought it was  
6 interesting that Xilinx was calling on its behalf one of  
7 the co-inventors of the patents, but what did we really  
8 learn from Mr. Munch?

9 We learned that Xilinx had paid him  
10 \$80,000 to fly all the way over here from Zurich,  
11 Switzerland, and testify opposite Mr. Vorbach, despite  
12 the fact that he says: I don't actually mind PACT. I  
13 had a good experience with them. I made my way forward  
14 there.

15 And all of that should make you think.  
16 Why do you suppose someone would come all that way to  
17 testify against his former employer, unless there was an  
18 ulterior motive? So it's up to you-all to judge the  
19 credibility of Mr. Munch, and it's up to you-all to  
20 decide who really is the best person to be describing  
21 how PACT's inventions came to be.

22 So those are the sideshows I wanted to  
23 get out of the way.

24 What I want to focus on right now are the  
25 real issues in this case. And there are three big,

1 significant issues in every patent case. Those issues  
2 are infringement, validity, and damages.

3           Although I should tell you that this case  
4 was kind of strange, because Xilinx treated those last  
5 two, validity and damages, kind of like an afterthought  
6 as I'm going to describe to you in just a few minutes.  
7 But let's talk about infringement first. Infringement  
8 is the biggest issue in this trial, and that is where  
9 PACT tried to keep its focus. The first thing I should  
10 say is I probably don't have to remind you that there  
11 was a lot of technical information that was presented to  
12 you during the course of this trial.

13           And one way for you-all to resolve all of  
14 that technical information is to consider the parties'  
15 expert witnesses. Consider which of them was the best  
16 qualified to testify about what they were saying and  
17 which of them appeared to be towing the company line.

18           On the one hand, you had Dr. Tredennick.  
19 Dr. Tredennick has a Ph.D. in electrical engineering,  
20 has a boatload of prestigious engineering awards. He  
21 was the chief scientific officer at Altera, the number  
22 two FPGA company. He holds FPGA patents. He's written  
23 FPGA articles. He was the keynote speaker at FPGA  
24 conferences. And even Xilinx issued a press release  
25 calling him an industry pioneer. And they even tried to

1 hire him to be their chief scientist.

2 I don't think you could possibly imagine  
3 a better qualified, a more qualified FPGA expert than  
4 Dr. Tredennick, which is why we submitted him to the  
5 Court, and Xilinx didn't object, as an expert in FPGAs.  
6 Who was Xilinx's expert?

7 Xilinx's expert was Mr. McAlexander. And  
8 I don't mean to be critical of him personally. He  
9 seemed to be a very nice man to me. That being said, he  
10 cannot hold a candle to Dr. Tredennick in terms of FPGA  
11 qualifications.

12 Mr. McAlexander has no prestigious  
13 engineering awards. He's never worked at an FPGA  
14 company. He holds no FPGA patents. He's written no  
15 FPGA articles. He's given no keynote speeches at FPGA  
16 conferences. He hasn't even attended any FPGA  
17 conferences. And there's certainly no press releases  
18 from Xilinx praising him as a visionary.

19 In fact, Xilinx didn't even offer up  
20 Mr. McAlexander as an expert in FPGAs.

21 Don't you think that was odd? Don't you  
22 think that it was odd that Xilinx, the world's largest  
23 FPGA-maker, tried to argue to you-all that it didn't  
24 need an expert in FPGAs on its side in this case?

25 We spent this entire trial talking about



1 Xilinx's FPGAs, but Xilinx tried to suggest to you we  
2 don't need an FPGA expert.

3 At the end of the day, Mr. McAlexander's  
4 chief qualifications appear to be that he knows a lot of  
5 stuff about electronics generally and that he is a very  
6 practiced professional witness. How practiced and  
7 professional?

8 Well, we showed you how practiced and  
9 professional Mr. McAlexander is. Very practiced and  
10 professional.

11 And that -- that should raise a question  
12 in you-all's mind about Xilinx's non-infringement  
13 position in this case. Because if you asked Xilinx,  
14 they will tell you that they are world-renowned. They  
15 are the leader of the FPGA industry. Everyone who's got  
16 an FPGA or is thinking about an FPGA knows and respects  
17 Xilinx.

18 So why isn't -- why isn't it that Xilinx  
19 couldn't have opened up its Rolodex and found one of its  
20 colleagues in the FPGA industry to come in here and  
21 testify on its behalf in this trial?

22 The reason is, because no one with any  
23 real FPGA industry experience would dispute that  
24 Xilinx's products have a permanent bus interface  
25 pursuant to the way that is used in the claims of the

1 patent.

2           No one in the FPGA industry would ever  
3 argue that, because Xilinx's products are designed to be  
4 bus interfaces. They're always used as bus interfaces,  
5 and they can't be reconfigured to be anything but bus  
6 interfaces.

7           So maybe the reason why Xilinx ended up  
8 hiring a practiced professional witness in this case is  
9 because Xilinx's non-infringement arguments are less  
10 about the technical issues and are more about word games  
11 that practiced professional witnesses are very good at  
12 playing. That's something I think you-all should  
13 consider.

14           So let's talk about the infringement  
15 issues in this trial. And remember what I told you  
16 in -- in the opening statement. The claims are the name  
17 of the game for infringement. In fact, the Court just  
18 told you the same thing. You must focus on the claims.  
19 And remember how I also told you in opening that Xilinx  
20 was going to do its best to divert your attention away  
21 from the claims. They want to spend their whole time  
22 looking for places other than the claims to define the  
23 inventions, like the rest of the patent, like  
24 co-inventors they flew in from Zurich, Switzerland.

25           But as the Court told you, the place

1 where you define the invention, the place that tells you  
2 what the invention is are the claims of the patent.  
3 Nowhere else.

4               Now, to be fair to Xilinx, they did play  
5 lip service to the claims. Like Mr. McAlexander, he  
6 told you, oh, yes, yes, yes; the claims define the  
7 invention. But virtually in the next breath, he says,  
8 oh, wait a minute; the patent specification, this is the  
9 invention.

10              And that was Xilinx's tactic during this  
11 trial, was to try to go find other places to define  
12 PACT's inventions, other than the claims, and then come  
13 back to the claims and say our definition is consistent  
14 with the claims. That's what Xilinx did.

15              But the Court told you you should start  
16 and stop with the claims, and the Court's definition of  
17 the claims. Those are the inventions.

18              So let's take a look at the word in the  
19 claims that Xilinx does not like. That word is  
20 permanent. You can see where it appears in the claims  
21 right there. And you heard Dr. Tredennick testify to  
22 you that permanent means not built out of those  
23 configurable logic blocks.

24              In simple terms, that means if a piece of  
25 logic is a bus interface, it's always going to be a bus

1 interface. It can't be changed to be something else.  
2 It's like a permanent translator that speaks a variety  
3 of languages. That translator is always going to be a  
4 translator, but you can program it and tell it, hey,  
5 please talk another language to me.

6           And at this point, I've gotten to my  
7 favorite part of this argument, because I get to play  
8 LEGOs with you-all. And I bought the three-year-old  
9 version of LEGOs, A, because they're bigger and easier  
10 to see; and, B, because my LEGO-building skills are  
11 about the level of a three-year-old.

12           Remember when I told you in opening  
13 argument that you could liken the word permanent to a  
14 prebuilt LEGO roof piece. This thing is a roof. It's  
15 always going to be a roof. I could toss it in the air.  
16 I could drop it on the ground. That thing is still a  
17 roof.

18           Now, it may be when I'm building my  
19 LEGOs, I connect my roof up to some other pieces so that  
20 my roof can be configured to be into a building of some  
21 sort, but that doesn't change the fact that the roof is  
22 still the roof. It is still permanent.

23           Another thing I did was build a roof out  
24 of individual LEGO pieces, and trust me, this was  
25 supposed to be a roof. Is this thing permanent?

1 I don't think so, because, look, that's  
2 not permanent (demonstrates). Now I've got individual  
3 LEGO pieces, and I can go and use these LEGO pieces to  
4 build something else. That's what permanent and not  
5 permanent means in the language of the claims.

6 And so there is no doubt that Xilinx's  
7 products have a permanent interface, and that that  
8 Xilinx interface includes a permanent implementation of  
9 a bus control system. You heard Mr. Menon testify, I  
10 agree, you know what, the RocketIOs, they're not made  
11 out of LEGOs; the EMACs, they're not made out of LEGOs;  
12 the PCIe, that's not made out of LEGOs either.

13 And as we further showed to you, all of  
14 those particular instrumentalities have a permanent  
15 implementation of a bus control system. For the Es and  
16 the Ps, it's this thing called flow control. It's right  
17 there. It's permanent. That's not made out of LEGO  
18 blocks.

19 In fact, there wasn't even any dispute in  
20 this case that flow control is a bus control. It's got  
21 the word control in its name. And even Mr. McAlexander  
22 didn't come up and dispute that.

23 And for the RocketIO, the permanent bus  
24 system control is this serializer/deserializer. Those  
25 are permanent parts of the RocketIO. They're not going

1 anywhere. If you drop them on the ground, they would  
2 still be there.

3 And the serializer controls the  
4 serialization of data coming -- going off the chip via  
5 the bus system, and the deserializer controls the  
6 deserialization of data coming on to the chip via the  
7 bus system. That's what Dr. Tredennick told you.

8 So because the right way to use the words  
9 in the claims is so simple and because infringement is  
10 so clear, Xilinx hates the word permanent. And that's  
11 why they spent this whole case trying to redefine the  
12 word. That's why they've spent this whole case trying  
13 to convince you that permanent means without any  
14 programming, or permanent means out of the box.

15 But you can -- you're going to have in  
16 front of you all the claims in this case, and you're  
17 going to have in front of you all the Court's claim  
18 constructions. And you can review those words for  
19 yourself. And nowhere in there are you going to see  
20 anything that says permanent means without any  
21 programming.

22 You won't see without any programming in  
23 any of that. You won't see out of the box in any of  
24 that. Xilinx is making those words up and trying to  
25 insert them into the claims, because it's otherwise

1 boxed in by those claims.

2           At the end of the day, all the  
3 programming that Xilinx is referring to is connecting  
4 these LEGO blocks up to other LEGO blocks in order to  
5 build some sort of a further structure. But the fact  
6 that you have to connect a LEGO block up to the roof  
7 doesn't change the fact that the roof is permanent.

8           Each of Xilinx's bus interfaces are  
9 permanent interfaces in the same way. They have to have  
10 pieces added to them, but that doesn't change the fact  
11 that they themselves are permanent.

12           Now, another key piece of the  
13 infringement case in this particular case is all of  
14 those documents that you saw where Xilinx was talking  
15 about how much it wanted PACT's patents and how it  
16 wanted to fetch them out of bankruptcy. And that's  
17 really interesting.

18           Why was Xilinx so interested in PACT's  
19 patents?

20           I mean, do you remember Dr. Trimberger's  
21 testimony? He told you that Xilinx is basically a  
22 patent machine. I mean, if you go down the lunch -- go  
23 down the hall to go eat lunch at Xilinx, you pass by  
24 2,000 patents. I kind of got the impression that if a  
25 Xilinx engineer sneezes, a patent comes out. I mean, it

1 is all about patents there.

2           So why were they so interested in our  
3 patents? It's not like they needed to add to their  
4 collection, unless, of course, there was something  
5 special about our patents; unless, of course, Xilinx  
6 knew that it was infringing them.

7           The next thing I want to talk to you  
8 about is validity. And as you've heard from the Court,  
9 every patent is presumed to be valid, and in order to  
10 overcome that presumption, Xilinx has to present to you  
11 clear and convincing evidence of invalidity. It's a  
12 huge burden.

13           And I bet when you heard the Court's  
14 preliminary instructions in this case on Monday, you  
15 probably thought validity was going to be a big deal in  
16 this case, because the Court spent like five minutes  
17 telling you all about invalidity defenses.

18           And yet when Mr. Baxter got up to deliver  
19 Xilinx's opening, the word invalidity didn't come out of  
20 his mouth. In fact, in this entire trial, I counted it  
21 up; Xilinx spent about 20 minutes talking about  
22 invalidity. 20 minutes.

23           And the reason why Xilinx doesn't want to  
24 talk about invalidity is because Xilinx is embarrassed  
25 by the issue. Because as we told you, in 2009, Xilinx



1 ran to the Patent Office and tried to get the Patent  
2 Office to take away PACT's patents in re-exam.

3 But that didn't work, and now Xilinx has  
4 got egg on its face, and it doesn't like mentioning  
5 invalidity, because when it mentions invalidity, we  
6 mention the re-exams. And when we mention the re-exams,  
7 you're reminded about all of Xilinx's efforts over the  
8 years to avoid this day in Court and to avoid doing the  
9 right thing.

10 All that being said, Xilinx couldn't help  
11 itself, so it had to come up with some invalidity theory  
12 in this case, and the invalidity theory it chose was  
13 this DeHon patent. And, frankly, we were quite  
14 surprised when Xilinx rolled out the DeHon patent,  
15 because the DeHon patent is a patent that Xilinx put in  
16 front of the Office -- the Patent Office in the  
17 re-examinations, in the '181 and the '106 patents.

18 It submitted it to the Patent Office, and  
19 the Patent Office said no way. The Patent Office said  
20 DeHon does not invalidate PACT's patents. And, in fact,  
21 DeHon was in front of the Patent Office in the original  
22 '106 patent. So the Patent Office has looked at  
23 Xilinx's smoking gun invalidity evidence three times,  
24 and each of those three times the Patent Office has said  
25 that does not invalid PACT's claims.

1                   So I certainly don't think Xilinx has  
2 come even close to clear and convincing evidence of  
3 invalidity. Although there's probably another reason  
4 why Xilinx doesn't want to talk about invalidity in this  
5 case, because when Xilinx brings up invalidity, we bring  
6 up the re-exams.

7                   And when we bring up the re-exams,  
8 you-all might start to ask yourselves a question, and  
9 that question is: If Xilinx is so sure that it doesn't  
10 infringe these patents, if it's so clear that PACT's  
11 permanent bus system is nothing like their permanent bus  
12 system, then why did they spend all that time and effort  
13 and money going to the Patent Office trying to  
14 short-circuit this trial and prevent this day in Court  
15 by getting the Patent Office to take away PACT's  
16 patents?

17                   Why did they need to do that, if it's so  
18 clear that they didn't infringe?

19                   Why did they need to throw that Hail Mary  
20 pass to the Patent Office, if there's no question that  
21 they trust you, the jury, to find non-infringement?

22                   It's a question you-all should ask  
23 yourselves.

24                   The last issue in any patent case is  
25 damages, and usually in a patent case, this particular

1 issue is hotly disputed, except this was an unusual  
2 patent case, because it really wasn't. We put before  
3 you the testimony of Mr. Jim Nawrocki, who ran through a  
4 very reasoned, calculated basis for awarding PACT  
5 damages of \$30.8 million.

6           And as we've seen in PX 318, Xilinx's  
7 sales of all these infringing chips have been ramping up  
8 year after year after year, willfully infringing PACT's  
9 patents. And Mr. Nawrocki put in front of you all the  
10 various Xilinx documents which showed just how important  
11 all of these features were to Xilinx and why they're  
12 worth that much money to PACT.

13           In response, the Defendants put up the  
14 testimony of Ms. Woodford, and Ms. Woodford's damages  
15 model actually agreed with PACT on almost every factor.  
16 The only difference between her model and PACT's model  
17 was her final conclusion, her final number, \$4 million.

18           But as you remember on cross-examination  
19 yesterday, the only way that Ms. Woodford got to \$4  
20 million was by cherry-picking out all the bad numbers  
21 that hurt her model, and she cherry-picked out those  
22 numbers to keep the damages low.

23           If you actually used all the data like we  
24 showed you yesterday, under her model, the damages would  
25 be \$79.5 million. All that just goes to show how

1 reasonable PACT's 30.8-million-dollar damage number  
2 really was.

3 Now, at this stage, what I'd like to do  
4 is talk to you a little bit about the jury verdict form.  
5 Mr. Diaz, would you mind -- thank you very much.

6 You will get a verdict form in this case.  
7 And the first question you're going to be asked is:

8 Does Xilinx infringe Claim 1 of the '181  
9 patent?

10 Relying upon Dr. Tredennick's testimony,  
11 the answer to that question would be yes. To save  
12 everybody time, I'll just write in Ys on the rest of  
13 these questions.

14 So the first question, infringement, just  
15 based on the differences between Dr. Tredennick and Mr.  
16 McAlexander, you can write in yeses, not to mention the  
17 mountain of technical information which we provided to  
18 you to proving that up.

19 Now, as to Avnet, I should add there  
20 hasn't been much discussion of Avnet in this case. The  
21 only discussion of Avnet, in fact, was Dr. Tredennick,  
22 who proved up that Avnet sells Xilinx's infringing  
23 products. That's enough for infringement. That's why  
24 there's a yes on Avnet.

25 On invalidity, as I previously said, they

1 don't even get close on invalidity. Therefore, when  
2 you're asked the question: Are the claims invalid, you  
3 write in, please, no, no, no, no, no. They're not  
4 obvious either: No, no, no, no, no.

5           The next question asks you as to  
6 willfulness. I think we've more than proven up to you,  
7 Ladies and Gentlemen of the Jury, that Xilinx has been  
8 willfully infringing PACT's patents. Just think back  
9 upon all the documents. Think back upon the e-mails.  
10 Think about Dr. Bolsens' testimony on the stand. The  
11 answer to that question is yes.

12           Question No. 4: Did PACT offer to sell  
13 in the United States or import into the United States a  
14 patented product?

15           You heard testimony after testimony after  
16 testimony that PACT never sold a product in the United  
17 States. They never brought one in that was ready for  
18 sale. I mean, Xilinx wants to talk about this 2006  
19 offer for a chip that was made to Xilinx, but there  
20 actually wasn't any chip product that existed at that  
21 time. It hadn't yet been made.

22           So the answer to this question, did PACT  
23 offer to sell in the United States or import into the  
24 United States a patented product, the answer to that  
25 question is no. And if you answer that question no, you

1 don't have to answer Question 5.

2           Then the final question you're going to  
3 be asked is: What's the fair damages in this case?  
4 As I just mentioned to you, Mr. Nawrocki more than  
5 easily proved up \$30.8 million as fair compensation for  
6 PACT in this case. So the answer to this question is  
7 \$30.8 million.

8           Ladies and Gentlemen of the Jury, I  
9 get -- I'm sitting down now, and I get to stand back up  
10 after the Defendants close to give you a few further  
11 thoughts. But I do want to leave you with something  
12 before I sit down.

13           Like I said to you in opening, this case  
14 is about something more than simple trespassing. This  
15 case is about doing the right thing. And I think we  
16 have more than proven up to you in this case that Xilinx  
17 has not done the right thing.

18           Xilinx tried and plotted for years to  
19 extract confidential information out of PACT. And, in  
20 fact, yesterday on the stand it admitted it breached a  
21 non-disclosure agreement in doing that. Xilinx plotted  
22 for years to put PACT into bankruptcy so it could get  
23 PACT's patents on the cheap. And Xilinx tried to take  
24 away those patents in re-exam, rather than face its day  
25 in Court here.

1                   So I think, Ladies and Gentlemen of the  
2 Jury, it's time for you to make Xilinx do the right  
3 thing. It's time for you to show Xilinx it's time to do  
4 the right thing.

5                   Thank you.

6                   THE COURT: Thank you, Mr. Grinstein.  
7 Mr. Arovas.

8                   MR. AROVAS: And, Your Honor, before I  
9 start, may I just put up one board that was used with  
10 Mr. McAlexander?

11                   I'm going to put it over here next to the  
12 lectern, because we can't --

13                   THE COURT: That's fine.

14                   MR. AROVAS: -- obviously block the  
15 screen.

16                   THE COURT: That's fine.

17                   MR. AROVAS: May it please the Court.

18                   Ladies and Gentlemen of the Jury, thank  
19 you for your time and attention. I actually want to  
20 join Mr. Grinstein in thanking you for your service.  
21 I know this is a long trial. I know the information was  
22 technical.

23                   And I can bet that two weeks ago, before  
24 you were impaneled on this jury, learning about FPGAs  
25 probably wasn't high on your to-do list. But you did

1 get to learn a little bit, and I hope some of it was  
2 interesting and some of it may be even entertaining.

3 Now, what I'd like to do is start from  
4 the very beginning, and from the very beginning of this  
5 case, from the opening statement that Mr. Baxter gave,  
6 he said this case is about non-infringement. Actually,  
7 that's something that Mr. Grinstein mentioned, and we  
8 strongly agree with that.

9 And we told you that the Xilinx products  
10 are different. We told you the Xilinx products uses a  
11 fundamentally different approach. Now, that was the  
12 beginning, and we were telling you what we intended to  
13 show you.

14 And think about what we did over the last  
15 week. We brought to you two of the absolute most senior  
16 technical scientists and engineers from Xilinx to tell  
17 you about how the products worked and how they were  
18 different. And I want you to try to think back to  
19 that -- that part of the trial.

20 How many questions did -- did PACT's  
21 lawyers actually ask Mr. Menon and Dr. Trimberger, who's  
22 sitting right over here, about the details of how those  
23 products worked?

24 Those cross examinations lasted minutes.  
25 Why did they do that? They had the people on the stand



1 under oath. They could have asked them every question  
2 they wanted to, and they didn't. Ask yourself why they  
3 conducted the trial that way.

4                   We're going to talk later about  
5 Dr. Tredennick. You heard opinions from Mr. McAlexander  
6 about issues of infringement and validity. And, of  
7 course, Dr. Tredennick has the right to get up and  
8 respond to those. Where was Dr. Tredennick at the end  
9 of the case?

10                   He's sitting right here in the back. We  
11 can see him over there in the front. In fact, he was  
12 here the last day of trial where they could have put him  
13 up on the stand. They could have said Mr. McAlexander  
14 is wrong. They could have gone through and said look  
15 what Mr. McAlexander said. We've got a transcript here.  
16 They could have showed you exactly what Mr. McAlexander  
17 said and tried to prove to you they were wrong.

18                   Why do you think the chair stayed empty?

19                   Because they didn't have a response. He  
20 was here. We had the time, but he didn't take the  
21 witness stand. So think about the evidence that you  
22 actually saw in this case.

23                   Dr. Trimberger, one of the visionaries in  
24 the field of FPGAs, 190 patents, a Xilinx fellow, an  
25 IEEE fellow. He got up to you and he talked about the

1 architecture, how the architecture works and why it  
2 works that way.

3                   Mr. Menon. We brought you the senior  
4 most engineer who was in charge of the chips and the  
5 blocks that you have to make a decision on in this case,  
6 the guy who did it hands-on.

7                   What were the questions from PACT about  
8 how that worked?

9                   It didn't happen.

10                  And Mr. McAlexander -- and this I find  
11 really interesting. Mr. Grinstein wants to say he's not  
12 taking anything away from Mr. McAlexander.

13                  Mr. McAlexander happens to be one of the  
14 world's foremost experts in buses and interface  
15 technology starting at Texas Instruments, and he's been  
16 doing this for 40 years.

17                  Now, you remember that chart that  
18 Mr. Grinstein showed you, where he compared the two  
19 experts?

20                  It sounded like what the expertise would  
21 need to be in this case is on FPGAs, right? And so we  
22 would expect to see that in the Court's jury  
23 instructions. But what's interesting -- if we could  
24 have the ELMO.

25                  And let's take a look at exactly when the

1 Court talked about the field of somebody of ordinary  
2 skill in the art, what is it? In the field of  
3 input/output and bus systems for programmable logic  
4 devices. This is in the jury instructions. You'll see  
5 it on Page 9. You can read it yourself.

6           Go to the next paragraph. Level of  
7 ordinary skill in the field of input/output and bus  
8 systems for programmable logic devices. This is the  
9 relevant field and skill in the art. In this case, it's  
10 for determining validity.

11           Relevant field for the patent, right? It  
12 doesn't say FPGAs. Now, of course, Mr. McAlexander has  
13 designed with FPGAs. He's destructively tested FPGAs,  
14 and he talked about that as well as numerous other  
15 programmable logic devices. But the issue in this case,  
16 the issue we've been talking about in the whole case is  
17 this, right? The permanent implementation of a bus  
18 system control. And that's what this case is about.

19           Now, because the main issue is the issue  
20 of infringement, and I agree with Mr. Grinstein that  
21 there are quite a few of sideshows. Mr. Baxter and I  
22 have decided to divide up the closing argument. I'm  
23 going to address the issue of infringement. And when  
24 we're done, hopefully, you'll see that should be the end  
25 of this case.

1                   Mr. Baxter is going to address some of  
2 these other issues, issues that I believe PACT is  
3 focusing on, because more than anything, they don't want  
4 the focus on the problems with their infringement case.

5                   So let's start with what happen matters  
6 in a patent case. As I said, a patent case is about  
7 patent claims. And here we have one and we know we have  
8 five in the case. Now, we have to decide, and it's a  
9 process, and the jury instructions say, you take those  
10 claims and you compare it against the product, and you  
11 have to see if each and every word of those claims in  
12 the product.

13                   Now, the Court helped us, and the Court  
14 gave us some definitions that we can use for purposes of  
15 this. And now, Mr. Grinstein was up here telling you  
16 just minutes ago how we don't want to look at the claims  
17 and the claim construction. I don't even think we're at  
18 the same trial.

19                   Mr. McAlexander was up on the stand for  
20 over three hours. Do you remember that board that was  
21 setting over there on the easel? That's this board  
22 right over here (indicates).

23                   And one of the things it has on it, it  
24 has the claim and it has the claim constructions that  
25 are applicable. In fact, that is the key issue. When

1 you saw the presentation from Mr. Grinstein, you didn't  
2 see that focused on.

3           In fact, he called using the word  
4 permanent, which is used by the Court in the claim  
5 construction, a word game. And so what I want to do is  
6 I want to actually take a close look at what we have to  
7 work with, what is it -- what's the right answer here,  
8 when we look at the claim construction and look at the  
9 evidence.

10           And let's focus very closely on this  
11 definition of interface unit, and that's one of the  
12 terms that's in the claims. It's in all of the claims.  
13 And what it says is a permanent implementation of a bus  
14 system control for communicating information.

15           What Mr. Grinstein wants to do is just  
16 focus on the word permanent. You heard Mr. McAlexander  
17 tell you, all the circuits on the chip are permanent.  
18 They're always permanent. The question is, what are  
19 they doing?

20           And the construction tells us what it  
21 needs to do. A unit providing a permanent  
22 implementation of a bus system control. So we're not  
23 looking for a permanent circuit. The CLBs that  
24 everybody agrees in this case are completely and totally  
25 programmable, is as permanent as any other circuit.

1 But what it isn't, it doesn't have  
2 permanent functionality, a permanent bus system control  
3 baked into it. And what is -- when we look at this  
4 phrase, what is being controlled? A bus system.

5 And guess what, we have a definition of  
6 bus system. It's used to communicate information  
7 according to a bus protocol.

8 So PACT wants to and, in fact, needs to  
9 run from these claim constructions as the only way it  
10 can make its case.

11 Now, I brought this up with  
12 Dr. Tredennick, and I don't know if you remember, but he  
13 had that shopping cart example or analogy that he used.

14 And I asked him, I said: Well, if I  
15 asked your wife -- if your wife asked you to go to the  
16 store and said buy me a loaf of bread and you came back  
17 with just an itty-bitty slice of bread, what would the  
18 reaction be?

19 The reaction would be: What did you just  
20 do? You brought me a slice of bread. I told you to get  
21 me a loaf.

22 And if we look at the claim construction,  
23 I asked him about that. And this is actually a  
24 demonstrative exhibit. This is what I put on the  
25 screen. The claim construction I asked Dr. Tredennick

1 how he was actually applying that claim construction.  
2 And we see here it's the same words we saw from the  
3 Court's construction: A unit providing a permanent  
4 implementation of a bus system control. And he wants to  
5 read in -- it's a little faint -- an aspect of bus  
6 system control. That is not in the Court's  
7 construction. If they wanted, they could have asked the  
8 Court to put it in there. They didn't.

9           It says a bus system control. We have to  
10 use the Court's constructions as they exist  
11 word-for-word. And just think about it with a loaf of  
12 bread. If I said a permanent implementation of a loaf  
13 of bread. It's not a slice. Its' not an aspect of.  
14 It's the loaf.

15           And we know what this loaf is supposed to  
16 do because the Court told us. You have control of a bus  
17 system, so it's bus system control, so you're  
18 controlling a bus system. You don't have to have more  
19 than one protocol. You can, but you have to have at  
20 least a protocol, because bus system is used to  
21 communicate information according to a bus protocol.

22           So think a little bit as you deliberate  
23 who is actually running from the claim constructions,  
24 who is changing the claim constructions. And we didn't  
25 hear from Dr. Tredennick to get back up on that stand

1 and explain to us why any of that is wrong.

2 And why is it that they needed to run  
3 from the claim construction? And we finally, after a  
4 long time with Dr. Tredennick, got to it.

5 The issue is, Dr. Tredennick admits  
6 there's no infringement, unless he can read an aspect of  
7 it into that claim construction. I asked him that, and  
8 I said: Let's say the jury were to conclude that it  
9 doesn't just have to be an aspect of bus system control,  
10 but what you actually have to find is actually control  
11 of the entire bus system. A bus system. The bus  
12 protocol as defined.

13 There would be no infringement, correct?  
14 Yes, I believe that's true.

15 They don't only run from the claim  
16 construction, they run from the entire patent. I have  
17 to tell you -- and I am not saying that this changes the  
18 claim construction. I'm saying it's consistent with the  
19 claim construction. It doesn't change it, but all I do  
20 in patent cases. In my entire career, I have yet to see  
21 until this case a patent case where the Plaintiff and  
22 the patent owner doesn't take the jury through the  
23 patent and say what was the problem I was solving?

24 What was my solution?

25 How did I describe it in 1996? Before I



1 had the Xilinx products in front of me, and I knew what  
2 I wanted to do to try to get a reasonable royalty, what  
3 did you say in 1996 before the lawsuit existed?

4           That's what's in the patent. And in  
5 every case I've ever seen, the Plaintiff, the patentee,  
6 they're proud of it. They go through it. That's what  
7 Mr. Munch did, right? Who, by the way, has no stake in  
8 this lawsuit and was subpoenaed for testimony by  
9 Xilinx -- I mean, by PACT for his deposition, and then  
10 brought to this trial by Xilinx.

11           And so they want to run from the patent.  
12 They don't look at anything else, don't even for  
13 context. Why?

14           Because they don't like the fact that the  
15 inventors, both of them, by the way, explained what they  
16 thought. The bus system control is predefined and does  
17 not require any influence by the programmer.

18           Now, of course, that's context, right?  
19 No influence or without any influence by the programmer  
20 is context. It's background. This (indicates) is what  
21 we applied for coming to the ultimate decision.

22           But why don't they want to talk about it?  
23 Why do they want to say ignore the patents?

24           It's because they're ignoring the claims.  
25 They're trying to ignore the patents. They're trying to

1 change their invention that they made in 1996 to cover  
2 something that is very different.

3 And so I told you about the standard for  
4 infringement, and the Judge has already instructed you.  
5 If a product is missing even one limitation of the  
6 claim, the product is not covered by the claim.

7 Mr. McAlexander focused on the most  
8 salient, the clearest differences. It is the permanent  
9 bus system control and the requirement for being able to  
10 provide that communication.

11 And there's a second instruction that  
12 you're going to see that you should pay attention to.  
13 This one relates to the issue of capability and  
14 functionality. And what the jury instruction will say a  
15 claim requirement may describe a certain functionality  
16 or capability that the device must possess.

17 In such cases, a device satisfies the  
18 requirement if it is reasonably capable of operating in  
19 the recited manner.

20 And now, I want you to focus on some  
21 language that's in the actual claims and the claim  
22 construction, because it's interesting to see how that  
23 lines up with this additional instruction from the  
24 Court.

25 If we look -- it's a little small. The

1 '181 patent, Claim 1, it says that this interface unit,  
2 it's combined with lines and everything like that and it  
3 has to -- providing communication between a processing  
4 unit and at least one additional unit, a memory device,  
5 or a peripheral device.

6           That's right down over here (indicates)  
7 providing. So there's a requirement of actually having  
8 the circuits and structure to provide information. We  
9 see it in the definition of bus system. It's a system  
10 used to communicate. We see it in the interface unit.  
11 It's for communicating information.

12           And then think back to how the FPGAs  
13 work. They're flexible. That's the whole point.  
14 They're building blocks. When they're sold, they can't  
15 communicate. They have to be programmed; the building  
16 blocks have to be put together.

17           And when they are put together, you will  
18 see every single witness in this case. All of the  
19 evidence is that you cannot make a bus system. You  
20 cannot put a bus protocol -- not one, not one single  
21 example of the hundreds of options that are out there  
22 can be done without programming CLBs, the very  
23 programmable devices that cannot permanently contain  
24 information, because when the power goes off, they lose  
25 everything.

1                   And so now let's talk about the Xilinx  
2 products. I told you the whole history. You heard it  
3 from Dr. Trimberger. The whole history from the first  
4 day with the Freeman patent in 1984, the architecture,  
5 the focus, the philosophy has been this flexible  
6 approach to always give the customers that option, but  
7 the consequence of that, you always, in the chip, have  
8 to use those programmable resources, the CLBs, to  
9 actually make bus system control.

10                   And that is, by the way, the opposite of  
11 what's required by the Court's construction.

12                   Every witness in this case testified,  
13 even the PACT witnesses, that the way the Xilinx chips  
14 are designed, you must program CLBs for bus system  
15 control. Dr. Trimberger, Suresh Menon, Mr. McAlexander,  
16 Dr. Tredennick, and even Mr. Vorbach.

17                   Let's look at some of the quotes. What  
18 did Dr. Trimberger say? That this feature is a  
19 fundamental philosophy to give programmability to our  
20 customers.

21                   What did we see about whether it even  
22 works? Can you get data on and off the chip without  
23 using CLBs and I/O blocks?

24                   No. And that goes all the way back to  
25 the first chip.

1                   What did Mr. Menon say? He's asked about  
2 RocketIO, EMAC, and PCIe; those are the three blocks in  
3 this case. Can any of them be implemented without  
4 programming CLBs?

5	No.
---	-----

6	Why?
---	------

7                               Because we provided the customer a  
8 flexible tool.

9                               Mr. McAlexander, what types of bus  
10 communication abilities does an FPGA have just out of  
11 the box?

12                   None. There's no protocol. Circuits are  
13 not told or controlled how to operate or how to  
14 cooperate.

15                   And even Dr. Tredennick, although he  
16 didn't come back to explain his response, if any, we do  
17 know from the cross examination what he said: Until  
18 this chip is programmed with CLBs, none of these blocks,  
19 not the PCIe, not the ethernet, not the RocketIO is  
20 going to communicate with any outside chips, according  
21 to the bus protocol, right?

22                   Then we go through a few questions  
23 talking about that it's actually sending any information  
24 or data, and he says yes.

25 | And the fact is, it's undisputed all of

1 the evidence that the capability to actually communicate  
2 information as required by the claim constructions, as  
3 we've seen here, as we've seen in the providing language  
4 in the claim, does not exist in the chip, because it's  
5 building blocks.

6           And when you put the building blocks  
7 together, there is one and only one way to do it. You  
8 have to program the CLBs, and that's not permanent. So  
9 it doesn't matter whether you're in the box, whether  
10 you're out of the box, whether you're after programming,  
11 the bottom line is these claims cannot be satisfied.

12           If there is even one element missing,  
13 there is non-infringement, and here, there are many  
14 missing.

15           Now -- and even Mr. Vorbach said it when  
16 he used Xilinx's chips, he had to program the bus.

17           Now, let's look at the documents. What  
18 are the documents, and this is the testimony you saw.  
19 How about the historical, technical documents that are  
20 used by engineers to understand what these products do  
21 and what these products don't do.

22           Well, the user guide for the RocketIO  
23 said it's tightly integrated with the programmable logic  
24 resources. Those are the CLBs. That's what we've been  
25 talking about, and I'll show you more about that later.

1 We went through -- I don't know if you remember -- both  
2 when I cross-examined Dr. Tredennick and with Mr.  
3 McAlexander, the data sheets that say, well, for all of  
4 these protocols, what resources are needed?

5                   And these are a selection of many, many  
6 different protocols, but we see the same thing over and  
7 over again. The mode, those are the different  
8 protocols, and what does it say? Hundreds of CLBs  
9 required for RocketIO, hundreds of CLBs required for  
10 Ethernet MAC, hundreds of -- up to 2,850 required for  
11 PCI Express.

12                   That is the only way these products work,  
13 and there's not a shred of evidence saying they can work  
14 without using those configurable blocks to do bus system  
15 control.

16                   Now, let's go a level deeper, right? We  
17 heard about the RocketIO and we saw some pictures from  
18 Mr. Grinstein about that. So let's go a level deeper  
19 and let's look at the RocketIO itself. And I don't know  
20 if you remember during the cross examination of  
21 Dr. Tredennick or the -- direct of Mr. McAlexander, I  
22 put up this block diagram of the RocketIO.

23                   That's the functional block diagram that  
24 shows us the inputs and outputs. And I pointed out over  
25 here where it says FPGA fabric and down over here, it

1 says FPGA fabric (indicates), and then I colored in  
2 yellow all the lines going in and out of that block.  
3 What does that show us?

4                   Virtually everything in the RocketIO,  
5 including the serializers and deserializers pointed to  
6 by Dr. Tredennick, are all connected up to control  
7 signals that are coming from the fabric. The fabric is  
8 the CLBs, those programmable blocks that we've been  
9 talking about that have to be used. This thing does not  
10 work without programming the CLBs. Cannot work.  
11 And guess what?

12                   I asked Mr. McAlexander about it. He  
13 says, yeah, those are all connected to the CLBs, to the  
14 fabric. That's the programmability. That's the  
15 opposite of being permanent.

16                   You take the power off, the programming,  
17 the bus system control, right? The circuit doesn't go  
18 away, but keep in mind, it's the bus system control that  
19 has to be permanent. That doesn't stay when you turn  
20 the power off.

21                   And the RocketIO can't do anything  
22 without that programming of the CLBs.

23                   What did Mr. -- Dr. Tredennick say? I  
24 asked him, you're going to have to program the CLBs, all  
25 those wires that are going to send those signals in and



1 out, right? And he said that's correct.

2                   So even Dr. Tredennick admits CLBs are  
3 required for the RocketIO to do anything. Without the  
4 control signals, it does nothing.

5                   So what does Dr. Tredennick do? He keeps  
6 retreating back and back to smaller and smaller pieces.  
7 And think about this. This case is about the evidence,  
8 and let's look at it. He retreats and his position and  
9 what he wants to tell you to do, he's going to say they  
10 have a serializer and a deserializer, and those two  
11 little blocks in that RocketIO in that larger chip  
12 that's filled with all those CLBs -- and all these parts  
13 don't work without the CLBs -- he wants to say that is  
14 the permanent implementation of a bus system control,  
15 those two little blocks.

16                   But even that doesn't make any sense.  
17 And why?

18                   Well, I asked. That's -- I asked  
19 Mr. McAlexander. I said, you know what, I want you to  
20 put your own opinions out of your mind. I want you to  
21 think about this and say, I'm going to, with blinders,  
22 focus just on that serializer and deserializer, and  
23 would it work?

24                   And he (sic) said: Is it even possible  
25 that the serializer and deserializer could satisfy the

1 requirements of the claims?

2 No.

3 Why?

4 It requires control from the fabric in  
5 order to operate. Even those two little boxes are  
6 entirely dependent on programming the CLBs to do  
7 anything. When the power goes off, that programming is  
8 gone. It's not permanent as we see required by the  
9 claims and the claim construction.

10 And guess who else said it.  
11 Dr. Tredennick, I asked him, too. Control signals from  
12 the FPGA fabric that have to be programmed with CLBs for  
13 the serializer to even work?

14 That's correct.

15 That's why PACT so much wants to focus  
16 just on the word permanent, because they want to say the  
17 RocketIO block is permanent. Of course, it's permanent.  
18 The CLB blocks are permanent. The memory blocks are  
19 permanent. The clock blocks are permanent.

20 What none of those things are is a  
21 permanent bus system control. They don't have that  
22 language in there that allows you to do anything. That  
23 requires the CLBs, and that is, by design, not  
24 permanent.

25 Now, you may wonder -- you say with all

1 this focus on serializers and deserializers, is that the  
2 invention? Is that even mentioned in the PACT patents?  
3 You can go through the PACT patents and you won't see  
4 serializer and deserializer mentioned. And guess what,  
5 that couldn't be their invention anyway. You know why?  
6 Serializers and deserializers, Mr. Menon was asked about  
7 that. They existed in Xilinx products in '95, before  
8 the PACT patents. Now, I don't want to suggest Xilinx  
9 invented the serializer/deserializer, because they  
10 didn't either.

11 In fact, Mr. Vorbach agreed the  
12 serializer had been around since there were computer  
13 chips. This is a very, very old circuit.

14 Mr. Munch was asked, did you invent  
15 serializers and deserializers?

16 No.

17 And, in fact, I showed Mr. McAlexander a  
18 piece of prior art. This is an article from 1994, years  
19 before the 1996 PACT patent. It's on a new FPGA  
20 architecture. And by the way, the new part is not the  
21 serializer. But what does it say? Parallel-to-serial  
22 converter, serial-to-parallel converter with a serial  
23 link in between. That's a serializer and a  
24 deserializer.

25 There's nothing new about it. Xilinx was

1 using serializers and deserializers in its chips before  
2 PACT. And by the way, it has nothing to do with  
3 infringement, because even that little block needs CLBs  
4 to work.

5 Now, why is it that there is such a big  
6 mismatch between the PACT patents and the Xilinx  
7 products?

8 And this really comes down largely to Dr.  
9 Trimberger's testimony where he told you about the  
10 fundamental approach. Xilinx is about allowing their  
11 customers to do whatever bus system control they want.  
12 To do that, they have to keep that level of  
13 programmability. Mr. Menon also explained that they  
14 couldn't, in fact, bake it all in and make it all  
15 permanent. And that's our idea.

16 And by the way, there's a cost to doing  
17 that. There's a cost in terms of cost in the chip.  
18 There's a cost in real estate. There's a cost in  
19 design, but that provides their customers the benefits  
20 their customers want.

21 Now, the PACT approach which was  
22 described by Mr. Munch, he told us about the goal. And  
23 I'm not saying that the goal overrides the claim. What  
24 I'm saying is that's a background in understanding the  
25 approach that was being used by PACT, the problem that

1 they were trying to solve. And we can contrast that  
2 with what Xilinx was doing to understand the context of  
3 this dispute, right?

4 And he was asked, right, would it have  
5 achieved your goals if you only had one aspect of the  
6 bus system control that was permanent?

7 The goal is only achieved if the bus  
8 system control implements the complete protocol, not  
9 half done.

10 Right? And he was even asked, and this  
11 was under oath: Was it your invention to use a  
12 combination of configuration logic blocks with I/O  
13 blocks to implement bus system control?

14 No. It's the approach used by FPGA  
15 chips -- to us -- so it was known how -- to us how this  
16 was done, and our goal was exactly the opposite.

17 That was on Page 35 of the slides.

18 So what do we know?

19 There's the FPGA approach, the  
20 building-block approach that maintains flexibility,  
21 programmability, non-permanent bus system control.  
22 That's the way the Xilinx products work, and every  
23 single witness who's testified about that functionality  
24 has confirmed that. That is the opposite of what PACT  
25 was trying to achieve.

1                   Now, let me talk just for a couple  
2 minutes about validity. I find this very interesting.  
3 I didn't realize I was embarrassed about this, so I just  
4 learned that for the first time in Mr. Grinstein's  
5 closing argument.

6                   We actually spent a substantial amount of  
7 time in a very short-time trial going through each and  
8 every one of the elements of the claims. And what Mr.  
9 Grinstein would like you to do is he would like you to  
10 just say, well, because there was a re-examination,  
11 forget it. It's all done. You don't have to do  
12 anything with validity.

13                   And I want you to just think back a  
14 little bit. Do you remember that patent video that you  
15 saw at the beginning of this case, the video that was  
16 played?

17                   And that patent video told you that it's  
18 commonplace, right, the patents go through the Patent  
19 Office, but the ultimate decision on patent validity is  
20 with the jury. That was in the patent video played to  
21 you by the Judge; right?

22                   And what does Mr. Grinstein want you to  
23 do?

24                   He said don't pay attention to it. Don't  
25 think about it. You don't need to. Somebody else

1 already made the decision for you.

2           Okay. Now, you have to make your  
3 independent decision, and you have to look at the  
4 evidence and you come to the decision of what you  
5 believe is right and wrong. But I can tell you one  
6 thing that's definitely wrong is that the Patent Office  
7 took the decision away from you, and that's what  
8 Mr. Grinstein would like you to believe.

9           And you'd think, after all of that, where  
10 was Dr. Tredennick to talk about it?

11           You heard Mr. McAlexander go through  
12 element-by-element and say where it all was. Where was  
13 Dr. Tredennick?

14           Sitting back there, not answering any  
15 questions, when he could have been on the witness stand  
16 and told you if PACT really believed that there was a  
17 problem with that analysis.

18           Now, what PACT did instead is they tried  
19 to confuse the issues. They said, well, remember that  
20 cross examination, shouldn't the DeHon patent not be on  
21 the flexible side; it should be on the permanent side.

22           Where is it on the timeline?

23           I don't know if anybody remembers that.  
24 And they kept going back and forth between different  
25 things that DeHon said. And Mr. McAlexander explained

1 very clearly, he said, no, you're missing the point.  
2 DeHon, and the reason I picked DeHon, is because he's  
3 tailoring it to the arguments in this case, the relevant  
4 in evidence this case.

5                   And DeHon has both fixed and  
6 reconfigurable and it says it right there, Figure 3C and  
7 if you'll look at Column 16, Lines 32 to 41, fixed bus  
8 structure and reconfigurable logic depending on whether  
9 it was a high-end or a low-end product.

10                   DeHon certainly considered, Mr.  
11 McAlexander told you, but look at everything else that  
12 was considered. What Mr. McAlexander did also tell you,  
13 and this is another reason why DeHon was the one  
14 presented. He went through the evidence, and what did  
15 he find, DeHon reference was considered by the Patent  
16 Office. I've read those and my opinion is, some of  
17 those technical submissions were not technically  
18 accurate.

19                   And that's why, Ladies and Gentlemen,  
20 these issues do come to juries because that's where  
21 these ultimate decisions of validity are made, just like  
22 you saw in the patent video.

23                   What is the response to all this from  
24 PACT? Not lawyer argument. The Judge just told you a  
25 lawyer argument is not evidence. What was their



1 response? Nothing. They never came back after Xilinx's  
2 case and said anything. These patents are not infringed  
3 and they are disclosed and invalidated by DeHon.

4 And thank you. With that, I'm going to  
5 turn it over to Mr. Baxter.

6 MR. BAXTER: May it please the Court.

7 Ladies and Gentlemen, let me, too, thank  
8 you for your service. I know it's been a long week and  
9 we've had long days.

10 This is incredibly important because this  
11 is a case in which a company that has been the leader in  
12 technology has been accused of stealing someone else's  
13 property and it is not true, and therefore, we have had  
14 to take up a lot of your time with technical issues that  
15 is very important to Xilinx.

16 But I want to talk to you about what they  
17 call the sideshows, a sideshow that they invented.  
18 And -- and let's start right at the beginning, and that  
19 is did PACT know about the Xilinx technology?

20 Here's the question, they're in our  
21 offices for five years, saying we have new technology.  
22 We have a new way of doing it. We want you to give us  
23 some money and buy our products. And here's the  
24 problem, they now claim they didn't know what our  
25 product was. After five years they claim, oh, we had no

1 earthly idea.

2 Well, look at Slide 42 for me, Mr. Diaz.

3 And we asked Mr. Weber on cross  
4 examination. Now, prior to meeting with potential  
5 customers like Xilinx, you educate yourself on their  
6 industry and their products, right?

7 Yes, we do.

8 And then if we go to Slide 45, we had Mr.  
9 Bolsens in here, the man that talked to them the most  
10 and we asked him: Did you talk about the RocketIO and  
11 the DSP48?

12 He said, of course we did. That's what  
13 the discussions were about.

14 It's simply untrue they didn't know what  
15 our product was. The problem is now they never accused  
16 us of infringement. They knew exactly about the  
17 RocketIO. They knew about the DSP48 and they never said  
18 a word.

19 Now, they want to say oh, you infringe.  
20 Well, their excuse was, well, we didn't know if you  
21 coarse-grain and we're not. Those arrays are fine-  
22 grained arrays and if that weren't true, you would have  
23 heard from Dr. Tredennick who backed up Mr. Vorbach on  
24 that and not a word. I read the transcript last night.  
25 The words never fell from his mouth. That's something

1 they just made up because they needed an excuse.

2 Well, then we had -- look at Slide 46 for  
3 me, Mr. Diaz.

4 We had these issues. And this is the  
5 sideshow that they brought up. First thing they did,  
6 they said, oh, well you copied us.

7 Let's go to the next slide.

8 It's going to be real hard and I'll be  
9 real interested in their closing argument how they  
10 explain this. The RocketIO, you copied the RocketIO  
11 from us. The problem was that we began working on the  
12 RocketIO in February of 2000, two years before PACT even  
13 shows up. We released the product before they even show  
14 up. So how we copied it from their materials or what  
15 they told us is sort of a mystery to me. Maybe they'll  
16 tell you about that.

17 And then we go to the issue -- excuse me,  
18 and -- and go if you would to 48, if you would, Mr.  
19 Diaz.

20 And we asked the man that designed the  
21 RocketIO, had you even heard of PACT? Have you ever  
22 seen any documents? He said no. They didn't ask him  
23 one single question about that, not one. If they had  
24 any evidence, they'd have drug it out then. Absolutely  
25 nothing.

1                   And then we go to the issue of, what I'm  
2 going to call, because they called it this and they  
3 wanted to keep calling it this because they thought it  
4 might prejudice you against Virtex Xilinx the patent  
5 grab. And -- and if there was a patent grab, then it  
6 had to do with Altera. They're the ones out buying  
7 patents. We were buying patents on technology we wanted  
8 to use, but we certainly weren't going to go buy patents  
9 that we didn't want to use.

10                   And we said at the time, these companies  
11 are not much of a threat to us, but we're interested in  
12 this technology in case that's the future.

13                   And go to the next slide.

14                   We look and see exactly what we said. It  
15 says they're well positioned from a patent point of  
16 view. If you believe that coarse-grain arrays will  
17 prevail in the future, then we ought to take a look at  
18 it. It turns out we decided not to go that route. Not  
19 only did we decide not to go that route, nobody in the  
20 industry, none of the 75 companies went that route  
21 either. They said, oh, well, you can't look at that,  
22 but look and see where the industries went.

23                   They kept doing it the way that Xilinx  
24 does it. They didn't go this route. But we were  
25 interested only, only if that's what the future was

1 going to be, and it turns out that wasn't it.

2 Go to Slide 51.

3 THE COURT: Five minutes, Mr. Baxter.

4 MR. BAXTER: Thank you, Your Honor.

5 Then they said, well, look, you were  
6 trying to extract information. Get Plaintiff's Exhibit  
7 118 in the jury room, send for it. And here's what it  
8 says: According to Ivo, they have some interesting  
9 patents and IP, but the rest of the technology doesn't  
10 fit.

11 Kees Vissers, who is a Xilinx employee,  
12 knows Peter Feist, the former CEO of PACT and maybe he  
13 could reconnect and get some financial information.

14 There was no technical information we  
15 were trying to extract. They just didn't tell you the  
16 truth about that e-mail.

17 And then we heard about the Intel deal.  
18 Here's the deal about the Intel deal.

19 Go to 55 if you would, please, Mr. Diaz.

20 Here's -- here's the deal on Intel, if  
21 your neighbor came to you and he's been living next to  
22 you for five years and he said, you know, I'd like to  
23 get an easement for free across your property for a  
24 water well and you're thinking about it and you're  
25 discussing it with your wife and the very next day he

1   sues you and says, oh, by the way, you stole 30 percent  
2   of my property and I'm suing you.

3                   So when he comes back on Wednesday saying  
4   how about that free water well easement, I don't know  
5   what your answer is, but my answer is, gosh, I just  
6   don't think that's right. And maybe we shouldn't do  
7   that.

8                   And I think what Xilinx did was much more  
9   generous than that. They said, have your lawyers call  
10   our lawyers because we're not going to get into some  
11   ethical violation and they just never picked up the  
12   phone.

13                   Let me talk to you about the jury verdict  
14   just a moment.

15                   If you'll bring the first page up, Mr.  
16   Diaz.

17                   The Judge asked you if we infringed on  
18   any of these claims, either us or Avnet and Avnet we are  
19   together. And the answer is no on each one of those.  
20   And for all the reasons that Mr. Arovas talked to you  
21   about, the answer is absolutely no. They wanted to have  
22   a slice of bread. Their expert told you it was only a  
23   slice of bread. And if nothing else, you know that  
24   slice of bread had to be programmed by the CLBs. It  
25   wasn't permanent. But more importantly the claim, the

1 claim calls for a bus system control, the whole thing,  
2 and it didn't call for a slice of bread.

3 The answer is no on each one of those.

4 Number two, is it invalid? And the  
5 answer is yes. Not a word of rebuttal from PACT about  
6 Mr. McAlexander's going through the DeHon patent and  
7 explaining how actually that invalidated their patent.  
8 They did not want to ask him a question about it and  
9 they wouldn't put their expert back up here and the  
10 answer is yes on each one of those.

11 Frankly, I don't even think you get to  
12 these next questions, but on willful, they didn't even  
13 think we were violating their patents. How could we  
14 even think they were? The Judge told you it had to be  
15 reckless and for five years they're in our offices  
16 looking at our technology and telling us theirs is  
17 different and we happened to believe them and they say  
18 we willfully infringed, the answer is no.

19 How about this importation issue, did  
20 they import it in the United States? Absolutely.

21 Go to Slide 62.

22 And Mr. Vorbach said he imported the chip  
23 in to San Jose, California in 2000. And so the answer  
24 is yes and the date you ought to put down is October of  
25 2000.

1                   Let me talk about damages in the two  
2 minutes I've got left.

3                   You heard Mrs. Woodford say that what you  
4 do is you look at a product with it and without it.  
5 Just like you'd look at the price of a car, with  
6 automatic transmission and without, and that's exactly  
7 what she did. And when you do that, the very most you  
8 could ever come up with is 4 million dollars. But you  
9 need not answer that question because once you find that  
10 we do not infringe, you get to skip that. That simply  
11 isn't a question you're ever going to get to.

12                   But to think that you're going to get 30  
13 million dollars for technology that didn't have anything  
14 to do with our chips is preposterous.

15                   Now, Ladies and Gentlemen, there's been a  
16 lot to absorb, but it all boils down to this, it all  
17 boils down to something that they have run from -- from  
18 throughout this trial. They don't even want you to read  
19 the whole patent. Get those patents in the jury room  
20 and look at the summary of the invention and see if they  
21 said it takes no programmer intervention, that that was  
22 their invention. That's exactly what Mr. Vorbach had to  
23 admit to and what Mr. Munch said that was their idea.  
24 That's what they wanted to do.

25                   Look and see, look at that chart with the



1 serializer and deserializer that's well known in the art  
2 that Xilinx has had in their -- in their product since  
3 1995, well before PACT using them exactly the same way,  
4 and see if those lines don't have to be programmed by  
5 the CLBs.

6 THE COURT: Thank you, Mr. Baxter.

7 MR. BAXTER: And if you do, Ladies and  
8 Gentlemen, the answer is no infringement.

9 Thank you, Judge.

10 THE COURT: Thank you.

11 MR. GRINSTEIN: Ladies and Gentlemen of  
12 the Jury I will just try to run right through all of  
13 those arguments in something of the order that you heard  
14 them, time permitting.

15 First question we heard was -- first  
16 argument we heard is why didn't PACT ask more questions  
17 of Xilinx's witnesses. Well, the reason why PACT didn't  
18 ask more questions of Xilinx's witnesses is because  
19 Xilinx's witnesses were talking about a completely  
20 different invention. They weren't talking about our  
21 invention and we could prove up the infringement of our  
22 invention in three questions of Mr. Menon, the three  
23 questions of Mr. Menon that I showed you in direct -- in  
24 my opening -- closing argument. The three questions  
25 that said their interface, it's not made out of LEGOS.

1 That's all we needed.

2           Now, I heard extensive criticism of PACT,  
3 which was frankly shocking, that we didn't waste your  
4 time and keep you here longer yesterday or longer today  
5 by calling up Dr. Tredennick to rebut the invalidity  
6 arguments that they phoned in.

7           I mean, if their invalidity arguments  
8 were so good, why didn't they even mention them in their  
9 opening statement? In fact, why didn't they even  
10 mention them when they introduced this case to you two  
11 weeks ago in jury selection. The reason why is because  
12 they don't have anywhere close to clear and convincing  
13 evidence of invalidity, an evidentiary standard which  
14 not once came out of their mouths talking about  
15 invalidity in their closing statement.

16           The Patent Office had looked at that  
17 DeHon reference three times, rejected it three times,  
18 and now they're asking you to second guess the Patent  
19 Office after three rejections of that and 15 minutes of  
20 testimony in this trial, 20 minutes, if I'm being  
21 generous to them, about the DeHon reference. There's a  
22 good reason why we didn't call Dr. Tredennick because it  
23 would have been a waste of everyone's time.

24           Also, did Xilinx's lawyers really just  
25 argue to you that they didn't need an FPGA expert in

1 this case? We've spent this whole case talking about  
2 Xilinx's FPGA products, this whole case discussing  
3 whether their FPGA products do the same thing as our  
4 patents. It was FPGA, FPGA, FPGA. But they couldn't  
5 find an FPGA expert who would sponsor their technical  
6 arguments.

7                   In their huge Xilinx rolodex of FPGA  
8 friends in the industry, no one stepped forward to say  
9 what Xilinx wanted them to say. That's why they had to  
10 hire a professional expert witness, and that's why  
11 they're trying to backfill now and claim that he had the  
12 necessary expertise to tell you all about Xilinx's  
13 FPGAs, which is exactly what he did.

14                   I want to talk to you a few seconds about  
15 some of their noninfringement arguments that they made.

16                   May I have the ELMO, please, Mr. Diaz?

17                   You heard this long discussion in the  
18 closing arguments about how PACT had redefined the word  
19 a in the claims to mean any aspect of. That is a little  
20 bit stretching of an argument because the whole reason  
21 that Dr. Tredennick was arguing any aspect of was to  
22 rebut their position that the word a in the claim means  
23 every. That is their position that every bus system  
24 control in their system has to be controlled by the  
25 interface unit. That is what they were saying and he

1 was just saying any aspect of to rebut their attempts to  
2 reread the claims, to rewrite the claims.

3           That's why Dr. Tredennick says they read  
4 it as being all bus systems control or every bus system  
5 control and it really just requires one. And he has  
6 said -- again said it in his redirect examination. You  
7 know what, all these arguments about any aspect of, they  
8 have absolutely nothing to do with my read on  
9 infringement because I am faithfully applying the word  
10 a.

11           We also heard quite a bit of additional  
12 conversation about this whole programmable/  
13 nonprogrammable business. And again, Xilinx's lawyers,  
14 without the benefit of any actual claim language,  
15 without the benefit of any actual definitions from the  
16 Court, continue to argue to you that permanent means  
17 without programming. That's all they want to say all  
18 day long.

19           You know what, I've got right here a  
20 thermostat. And what kind of thermostat is it? It's a  
21 programmable thermostat. And this thermostat, this  
22 thing's permanent. I can't take apart these parts and  
23 go build something else with it. This is always going  
24 to be a thermostat, nothing else. But look, it's still  
25 programmable.

1           I mean, Xilinx's argument continues to  
2 be, and yet they still won't address what we're saying  
3 about it, yes, when you have your permanent bus  
4 interface you are going to connect it up to some  
5 surrounding LEGOS. You are going to do that on the  
6 chip.

7           But what on earth does that have to do  
8 with the fact that this thing is not still permanent.  
9 It is. You can connect it to all the CLBs you'd ever  
10 want to and that thing is not changing its shape. That  
11 thing is still permanent. I didn't hear any response to  
12 that from Xilinx's lawyers.

13           I also heard an argument that, you know,  
14 the serializer and deserializer were around at Xilinx  
15 since time in memorial and therefore we didn't invent  
16 anything new.

17           Ladies and Gentlemen of the Jury, we're  
18 accusing an FPGA product. We're not saying we invented  
19 the FPGA either. What we're saying is we invented a  
20 much larger claim, a much larger context of the claim  
21 which includes many parts, one of which was their  
22 implementation of a permanent serializer, deserializer.  
23 It's one part of a larger claim.

24           You can't just pick out one thing and say  
25 you know what, that was known back in 1985, therefore

1 PACT didn't invent anything new. That's absolutely not  
2 the right way to proceed on that.

3 I heard a straw man argument that was  
4 raised that says we never proved up copying it, that,  
5 you know, RocketIO came from before our time of our  
6 patents and therefore we never proved up Xilinx's  
7 copying, which is kind of funny because we never argued  
8 that Xilinx copied.

9 Do you remember from my opening statement  
10 when I told you that what Xilinx had done was come on to  
11 our land and then see our no trespassing sign. Xilinx  
12 developed the RocketIO, but then it found our patents  
13 and when it found our patents instead of stopping  
14 infringing those patents like it should have, it stayed  
15 on our land and continued to infringe. That's exactly  
16 what I told you in the opening statement.

17 So the whole notion that we failed to  
18 prove up copying, it -- it's easy to set up an argument  
19 that we're going to lose if it's not an argument we're  
20 making.

21 Again, we heard more discussion of this  
22 complex contraption of an argument that, you know, PACT  
23 must have known that Xilinx was infringing. But where  
24 were the documents that they showed you? Where were the  
25 internal documents from PACT that showed that PACT knew

1 about this RocketIO and knew how it worked or knew about  
2 embedded EMAC and knew how it worked or knew about PCI  
3 Express and knew how it worked. They had plenty of  
4 internal PACT documents. Why couldn't they find the one  
5 that said, oh, we know how PACT -- how Xilinx works and  
6 we don't think it infringes those particular elements,  
7 the RocketIO, the embedded EMAC, the PCI endpoint?  
8 There are no so such documents.

9           And, you know, this whole who told who  
10 what, ask yourselves why all those times when PACT was  
11 going to Xilinx telling Xilinx about PACT's technology,  
12 why didn't Xilinx tell PACT, you know what, we're doing  
13 what's in your patents. Think about that. Why didn't  
14 they do that?

15           And I want to close by discussing some of  
16 the things we didn't hear a response to in the  
17 Defendants' closing argument. We didn't hear a response  
18 to why they filed that re-exam. Why did they run to the  
19 Patent Office to take away our patents if it really was  
20 so clear that they don't infringe, like they just  
21 represented to you in closing argument? Did you get an  
22 answer to that question from them? Because I didn't  
23 hear it.

24           THE COURT: Two minutes.

25           MR. GRINSTEIN: Why didn't they hire a

1 real FPGA expert? They know everybody in the industry.  
2 It would have been so simple for them to come and  
3 present somebody with credentials almost as good as Dr.  
4 Tredennick's. But they didn't. What's the answer to  
5 that? What was the answer to why they couldn't find  
6 somebody who would come in with real industry experience  
7 and really tell you why Xilinx didn't infringe? I  
8 didn't hear that answer.

9                   What was the answer to why they continued  
10 to go to other parts of the patent to try to define the  
11 claims? It was almost the last thing that Mr. Baxter  
12 said. He said go look at the summary of the invention  
13 and figure out what the claims mean from that. Why do  
14 they continue to do that?

15                   Did you hear an explanation for that?  
16 Because the Court sure didn't tell you, go to the  
17 summary of the invention or try to figure out what  
18 PACT's inventions is by cobbling together parts of the  
19 specification or people's testimony. The Court told you  
20 to go to the claims of the patent and stop right there.

21                   And finally, why didn't we hear answer to  
22 the fundamental and simple question of why was Xilinx so  
23 interested in PACT's patents? Xilinx is overfilled with  
24 patents. It's overloaded with patents. I don't think  
25 they have any more room on that wall on the way to the



1 lunchroom. There is no more room there. So they aren't  
2 just in the habit of collecting random patents. They  
3 aren't just in the habit of, nah, let's pick up a couple  
4 patents because maybe 15 years from now we'll need them.

5           There is a reason why Xilinx was so  
6 interested in our patents. The reason was because  
7 Xilinx knew it infringed them. Xilinx knew it needed to  
8 use our patents. And this whole case comes down to the  
9 fact that Xilinx has never wanted to pay fair  
10 compensation for them.

11           THE COURT: Thank you, Mr. Grinstein.

12           MR. GRINSTEIN: Thank you, Your Honor.

13           THE COURT: Ladies and Gentlemen, if you  
14 would turn back to Page 14 where we left off on the  
15 instructions, I'll pick up with those.

16           You should consider and decide this case  
17 as a dispute between persons of equal standing in the  
18 community, of equal worth and holding the same or  
19 similar stations in life. This is true in patent cases  
20 between corporations, partnerships or individuals.

21           A patent owner is entitled to protect its  
22 patent rights under the United States Constitution.

23           This includes bringing suit in the United  
24 States District Court for money damages for  
25 infringement. The law recognizes no distinction among

1 types of parties. All corporations, partnerships, and  
2 other organizations stand equal before the law,  
3 regardless of size or who owns them and are to be  
4 treated as equals.

5           When you retire to the jury room to  
6 deliberate on your verdict, you may take this charge  
7 with you, as well as exhibits which the Court has  
8 admitted into evidence. Because there are so many of  
9 them, we're not going to send them all back, but if you  
10 want to see any exhibit, simply describe it in the best  
11 manner you can and put it in a written note and pass it  
12 up and we'll try to get that exhibit back to you to  
13 consider.

14           Select your Foreperson and conduct your  
15 deliberations. If you recess during your deliberations,  
16 follow all of the instructions that the Court has given  
17 you about your conduct during the trial.

18           After you've reached your verdict, your  
19 Foreperson is to fill in on the form your answers to the  
20 questions. Do not reveal your answers until such time  
21 as you are discharged, unless otherwise directed by me.

22           You must never disclose to anyone, not  
23 even to me, your numerical division on any question  
24 that's before you before you return your verdict.

25           Any notes that you've taken during this

1 trial are only aids to your memory. If -- if your  
2 memory should differ from your notes, then you should  
3 rely on your memory and not on the notes. The notes are  
4 not evidence. A juror who has not taken notes should  
5 rely on his or her independent recollection of the  
6 evidence and should not be unduly influenced by the  
7 notes of other jurors. Notes are not entitled any  
8 greater weight than the recollection or impression of  
9 each juror about the testimony.

10           If you want to communicate with me at any  
11 time, please give a written message or question to the  
12 court security officer who will bring it to me. I'll  
13 then respond as promptly as possible, either in writing  
14 or by having you brought into the courtroom so that I  
15 can address you here orally. I will always first  
16 disclose to the attorneys your question and my response  
17 before I answer your question.

18           After you have reached a verdict, you are  
19 not required to talk with anyone about the case unless  
20 the Court directs otherwise.

21           And with that, you may now retire to the  
22 jury room to deliberate.

23           LAW CLERK: All rise.

24           (Jury out.)

25           THE COURT: Is there anything we need to

1 put on the record at this time by either side?

2 MR. GRINSTEIN: Not from the Plaintiff,  
3 Your Honor.

4 THE COURT: All right.

5 MR. BAXTER: Nothing from the Defendants,  
6 Your Honor.

7 THE COURT: All right. The jury is being  
8 provided with lunch. I think that everyone is safe in  
9 doing the same. I would ask you, however, if you're not  
10 going to leave somebody here in the courtroom, to please  
11 let Mr. Ponder know how to get in touch with whoever you  
12 want to be notified in the event there's a question, and  
13 we'll -- we'll notify you before we respond.

14 And with that, we're adjourned. Thank  
15 you.

16 (Recess.)

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